

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA, et al.

Plaintiffs,

Civil Action No.  
1:21-cv-11558-LTS

v.

AMERICAN AIRLINES GROUP, INC.,  
et al.,

Defendants.

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BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

BENCH TRIAL  
Day 14

Monday, October 24, 2022  
9:00 a.m.

John J. Moakley United States Courthouse  
Courtroom 13  
One Courthouse Way  
Boston, Massachusetts

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**EXHIBITS**

On behalf of the Plaintiffs:	<u>Admitted</u>
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**P R O C E E D I N G S**

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

THE COURT: Please be seated.

Good morning, everyone. Everybody ready to go?

MR. WALL: We are.

THE COURT: All right.

MR. WALL: I'll ask Dr. Israel to come back.

THE COURT: Yes, Dr. Israel, I remind you, you remain under oath.

THE WITNESS: Yes. Thank you.

**MARK ISRAEL, Ph.D.**

having been previously duly sworn, testified as follows:

**DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF AMERICAN AIRLINES**

BY MR. WALL:

**Q.** So Dr. Israel, on Friday, we just finished our discussion of the market context for the NEA, so let's now turn to the terms of the NEA. So in evaluating the potential competitive effects of the Northeast Alliance, did you review the terms of the contracts?

**A.** Yes, in great detail.

**Q.** And why did you do that?

**A.** It's the essence of the issue. I heard Your Honor early

1 in the case say if you want to evaluate the collaboration at  
2 issue, you need to look at the actual terms of the contract.  
3 So I paid great attention to them.

4 **Q.** So cutting to the chase, at least one of the chases, when  
5 you do that, do you find that the NEA is akin to a merger?

6 **A.** Definitely not.

7 **Q.** Why not?

8 **A.** Well, in thinking about whether something is a merger, I  
9 mean, I really think about three issues. These issues are  
10 laid out in a paper that's been mentioned in here by Dan  
11 O'Brien, who is my colleague, and Steve Salop. But it's  
12 really what are the incentive effects, does it create control  
13 like a merger would, and does it preserve competition.

14 And on all of those to mention, the NEA is nothing  
15 like a merger.

16 **Q.** Okay. Let's turn to the first of those, control. And  
17 with respect to control, why do you say that the NEA does not  
18 function like a merger?

19 **A.** I mean, it's literally no control. These remain entirely  
20 separate firms with separate boards and separate management  
21 themes implementing very distinct business models. There's  
22 no -- in some cases you have some cross ownership or some  
23 cross control or influence. There's none of that, right?  
24 These are separate firms operating with a contract now, but  
25 as entirely separate firms with separate managements. And

1 we've seen that, they continue to implement their own fleet  
2 plans, their own -- they have different prices in the  
3 market. They have very distinct business models. As I said,  
4 you know, from the JetBlue point of view, which has been a  
5 lot of the focus, JetBlue has continued to, you know, make  
6 its own decisions. It even proposed a merger that I think  
7 American found out about in the press. It's had operational  
8 issues we've heard about this year and it's dealt with them  
9 entirely on its own. So I mean -- and getting more to the  
10 meat of it, as someone who studies airlines, these are  
11 operating as separate airlines with a contract between them.

12 **Q.** Okay. Let's go on to the second point, the degree to  
13 which competition is preserved, and to that end, I think we  
14 have a demonstrative entitled, "Aspects of Competition." Can  
15 you describe the demonstrative and how it relates to the  
16 issue of preserved competition?

17 **A.** Sure. So when I think about airlines in general, I think  
18 about at least five that are summarized here, aspects of  
19 competition, how airlines function and compete in the market.  
20 So I'll run through these. I mean, the first three are just  
21 the overall business model, which matters in any industry,  
22 but really matters in airlines. I think I heard Dr. Lee talk  
23 about this in some detail, network legacy carriers really  
24 operate a very different business than LCCs, so one issue is  
25 how do you -- what's your business model. A second one is

1 capacity, which is really your fleet. How do you buy your  
2 fleet and how many planes do you have, when do you retire  
3 your planes? And the third one here would be pricing, which  
4 I think you've heard, Your Honor, in the testimony. The  
5 pricing of airlines really has two elements, there's what  
6 prices do you put in the market, and probably even more  
7 important, how do you manage your buckets, your yield  
8 management, what prices do you make available.

9 On all three of those dimensions, there's full  
10 competition between the parties. Right? And I have a  
11 statement here from the contract itself that stresses that.  
12 I won't read it. But it says there's competition on all  
13 three of these elements, so that competition is all  
14 preserved. None of that would be preserved in a merger, but  
15 all of that competition is preserved.

16 Then the fourth one down is the network/route  
17 planning. So that's a fourth airline function that you'd  
18 find inside an airline, is the route planning function.  
19 There we have the one dimension on which there is  
20 coordination, which is coming together to -- it says here to  
21 work together to form a more effective network in New York  
22 and Boston, combining the assets of the two carriers, but  
23 it's just that. Right? Ultimately they maintain independent  
24 control over their networks. They're certainly everywhere  
25 outside New York and Boston, but even ultimately the

1 decisions for New York and Boston. So there's some  
2 coordination there, some competition.

3 And then on element five is one I think is very  
4 important in airlines that sometimes gets skipped over, which  
5 is customer loyalty, attracting customers really to your  
6 frequent flyer program or your corporate program. And  
7 there's -- I think we've heard testimony on this, as well.  
8 There is complete competition. They are both still  
9 interested in getting people into their own loyalty programs.  
10 And that's -- you know, if you get somebody to fly on your  
11 plane, they join your loyalty program, then you can sell  
12 credit cards to them, but more generally they're going to fly  
13 your flights nationwide or globally, which is going to  
14 generate more revenue.

15 And the statement on the right hand here just notes  
16 that things like credit cards and loyalty and other services  
17 like that are not part of the revenue sharing under the  
18 MGIA --

19 **Q.** Okay. Thank you, sir. If we move forward a little bit  
20 and focus on the network route planning issue. In your  
21 testimony last week, you made a reference to the NEA  
22 capturing parts of a production joint ventures. What is the  
23 significance of the reference you made to the production  
24 joint ventures?

25 **A.** It's really how I think about the NEA. It's coming



1 together to form a new product, the new product being a  
2 combined network in the Northeast.

3 So there's a long history in economics of studying  
4 production joint ventures, generally seen as the most  
5 pro-competitive forms of joint ventures because you're  
6 creating a product that couldn't be created separately. And  
7 just to give one analogy, before I dive into it here, a place  
8 I work on, some have seen this, is in pharmaceuticals.  
9 You'll see different pharmaceutical companies come together  
10 using different patents or different technology that they  
11 each have to make drugs that they couldn't make separately.

12 So for example, I think we've recently all heard  
13 about this. There has been a joint venture between Pfizer  
14 and BioNTech. They each had different pieces of the IP and  
15 they came together to make the COVID vaccine that Pfizer has  
16 sold. So the idea, though, is you have different assets and  
17 you can create something that couldn't be created separately.  
18 The creation of that thing is inherently procompetitive.

19 **Q.** So we put up a slide entitled, "The NEA as a production  
20 joint ventures." And I suppose the first question is what is  
21 "the thing," to use your phrase, that they are jointly  
22 creating here?

23 **A.** My very descriptive phrase. They are jointly creating  
24 the network, the joint network in -- out of New York and  
25 Boston. Right? So they are -- there's a -- absent the NEA,

1 American and JetBlue have, as listed here, they have assets  
2 that they -- you know, here it's not patents or  
3 pharmaceutical products, but it's planes, it's slots, it's  
4 gates, it's relationships with customers. It's strength in  
5 different airports, it's different connecting routes. Those  
6 are the assets they have.

7 Right? What the NEA is doing is, out of New York  
8 and Boston, it's saying if we combine our slots and our  
9 gates, we jointly manage where we're going to put our planes,  
10 we plan on network, the thing that come out on paper and  
11 ultimately implemented is a combined network. That's an  
12 optimized schedule. And what this slide is explaining, I  
13 think it's pretty straightforward, the new product is the NEA  
14 network. Just like in any production joint venture, to  
15 create that new product, you have to get together and plan  
16 that product. Right? You have to figure out who's flying  
17 where, and what planes are we putting, and what times of day  
18 are we flying? That's a joint production process.

19 **Q.** Is that planning that goes on in that joint production  
20 process the kind of capacity coordination that worries  
21 economists?

22 **A.** No. In fact, for me, I wouldn't call that capacity  
23 coordination. So I've been somewhat confused at some of the  
24 discussion that I've heard in the trial. When I hear  
25 "capacity coordination," and the kind that's been studied and

1 in the airline industry, that's about -- Dr. Town testified  
2 to this, that's about what is our fleet size going to be?  
3 There's been discussion of is it going to grow faster or  
4 smaller than GDP, and are we jointly going to reduce the  
5 amount of capacity that we have in some way.

6 To me, this is network planning, deployment of  
7 capacity. And that distinction is really important, one,  
8 because this is not about overall capacity levels, but two,  
9 to me, this is the opposite. Because the logic people put  
10 forward about why capacity coordination could be bad is that  
11 it will reduce the amount of capacity in the industry. That  
12 means they're worried -- as an economist, they're worried it  
13 will reduce output. What this is doing is trying to get more  
14 output out of the set of assets. We're trying to figure out  
15 the most efficient way to use assets. To economists, that  
16 would be called increased capacity utilization, and that goes  
17 in the opposite direction. That's output increasing not  
18 output reducing.

19 **Q.** Okay. Before we move on, I do want to ask you one  
20 follow-up question from the previous slide, and focusing on  
21 pricing. So how do you see, in the context of this case, the  
22 fact that American and JetBlue retain independent authority  
23 over pricing decisions?

24 **A.** Again, it's very important to the discussion that I've  
25 heard. Because a lot of attention has been on the JetBlue

1 effect. I know Professor Miller -- and I'll analogize some  
2 of what he was finding in his model to the JetBlue effect,  
3 and I've certainly studied the JetBlue effect myself. The  
4 JetBlue effect is the pricing effect that JetBlue has in  
5 markets. So the question is will that pricing effect be  
6 lost?

7 And this goes to sort of the essence of why  
8 business models and why pricing philosophies matter. It's  
9 not just a set of equations in this industry. It's how you  
10 set prices. And JetBlue -- there's two big things that  
11 JetBlue does that are distinct just in how they go about  
12 setting prices. One is they see their core customer as  
13 people who might not otherwise have flown. They try to grow  
14 the whole market. To do that, you have to maintain prices  
15 low enough that you can attract those people who might not  
16 have flown. And two, they have a yield management system.  
17 Their idea of how they keep their buckets open. They keep  
18 their buckets open, their cheap buckets open longer. Their  
19 focus is much more on trying to keep their planes full.  
20 Those are business philosophies that remain, and I mean,  
21 those are the essence of the JetBlue effect, the independence  
22 of pricing decisions means JetBlue can continue to do that  
23 and continue to put that competitive pressure in the market.

24 **Q.** Okay. Thanks.

25 Let's turn to revenue sharing. And as you know,

1 Dr. Miller argues that NEA revenue sharing creates incentives  
2 that justify treating the NEA like a merger. Is there  
3 economic theory that supports that approach?

4 **A.** Not if applied correctly, not if to what -- not to this  
5 transaction. So -- and just to explain what I mean by that,  
6 Professor Miller in his report, in his testimony, talks about  
7 how, in some circumstances, if you're sharing profits or  
8 maybe sharing revenues, in fixed proportions, kind of a  
9 static profit sharing, that can create some of the incentive  
10 effects that are like a merger. It doesn't create the  
11 control, it doesn't eliminate competition, but that form of  
12 profit sharing, could create -- economists have studied that.  
13 That could create effects that have some of the effects of a  
14 merger.

15 But that's not this case, right? This case is  
16 revenue sharing with the MGIA as the formula. It's dynamic,  
17 it depends on how much capacity you have. It creates  
18 incentives that go the opposite direction, so the economic  
19 theory tells me is that one way there is something that's  
20 like a merger. The other way there is something that is  
21 really the opposite of a merger. This case -- the  
22 contract -- the parties explicitly chose the thing that's the  
23 opposite of a merger. They went this way. And Professor  
24 Miller is acting like they went this way to justify it being  
25 like a merger, when, in fact, the conclusion should be the

1 reverse.

2 **Q.** So we put up a demonstrative that was created to  
3 illustrate this point. Can you describe what you depicted  
4 here and what it means for the analysis?

5 **A.** Sure. So there is just four boxes on the -- sort of  
6 farther to the left. So the far to the right is a merger,  
7 how much is this like a merger. And then we move over to the  
8 left, we get to forms of profit or revenue sharing that are  
9 less and less like a merger. So fixed proportion profit  
10 sharing is what Professor Miller talks about, for the most  
11 part, in his report. And much of his report and testimony is  
12 that bottom, short arrow. Fixed proportion and profit  
13 sharing can get you something that can look similar to a  
14 merger on some dimensions. Right? And then he argues a  
15 little bit one box over, which is, well, if it's fixed  
16 proportion revenue sharing, and I would say if they have  
17 similar cost structures, that's a step removed. It's not  
18 profit sharing if you're only sharing revenue, but he argues  
19 some for that second arrow. But, in fact, we are all the way  
20 to the left, right? Because there are two key differences  
21 that he's not talking about.

22 One is that the parties here have very different  
23 cost structures. So even under a fixed proportion revenue  
24 sharing, economics tells me that when JetBlue has much lower  
25 costs than American, their incentives aren't the same.

1 JetBlue wants to price aggressively, they're going to  
2 continue to do that. Professor Miller doesn't think about  
3 that extra step.

4 And then the final box over is you add to that  
5 dynamic revenue sharing under the MGIA with capacity  
6 expansion incentives that were intentionally put in the  
7 contract, now we're all the way over to left.

8 So effectively, what Professor Miller has to do is  
9 jump from the box that's all the way on the left to the box  
10 that's all the way on the right, even though that's not what  
11 the deal is. And so he would need to show you that full long  
12 arrow, which you can't show as a matter of economics. He  
13 argues for the short one, which is really irrelevant here.

14 **Q.** So would the MGIA and it's particular form of revenue  
15 sharing be a rational choice for an alliance that was  
16 intended to reduce capacity?

17 **A.** No, it's the opposite. And hopefully we'll get into more  
18 detail on this, but they intentionally chose the contract  
19 that's the box all the way on the left. In the way I think  
20 about it, there's a choice. Firms make optimal choices.  
21 They chose contract that builds in growth incentives and that  
22 builds in -- let's them maintain their separate cost  
23 structures. That's an intentional choice that they made.  
24 That's not a choice you would make if you were trying to  
25 simulate a merger.

1     **Q.** Okay. Let's talk in some detail now about the MGIA and  
2     how it works.

3             Preliminary question, in your view, what economic  
4     functions does the MGIA serve?

5     **A.** So the MGIA is, again, just to make sure we're all on the  
6     same page, it is the revenue sharing in the NEA. So that  
7     revenue sharing has to serve two functions. And it's really  
8     making those functions work together that makes the MGIA  
9     unique. One is revenue sharing in any alliance like this,  
10    the purpose of it is to create enough alignment of interests  
11    on the network itself, "metal neutrality" is a term you've  
12    heard that I can talk more about, such that the parties  
13    are -- they have enough alignment of interest that they can  
14    work together to jointly plan their network. So that's  
15    function one.

16            But function two, the parties are trying to do that  
17    in a way that does not create any incentives to reduce  
18    capacity, but quite the contrary, gives them incentives to  
19    grow. So we've heard that testimony, we want revenue  
20    sharing, but only if it creates growth and incentives, so the  
21    MGIA, I think quite creatively, is trying to combine those  
22    two functions.

23    **Q.** You mentioned metal neutrality, so let's move to that. I  
24    think you have a slide on this. Let's put that up. And why  
25    don't you go ahead and explain what you're depicting here.



1     **A.** Sure. So this is sort of what metal neutrality -- metal  
2     neutrality is jargon, frankly, in the airline industry. It  
3     gets used all the time. It's sort of thrown around. It  
4     generally means that there's some form of revenue sharing  
5     such that there's some indifference or less care -- less  
6     difference about whose plane the people fly on. So people in  
7     the airline industry call planes "metal." And sometimes I go  
8     home now and say to my wife, what metal are we on and she  
9     thinks I'm talking in too much jargon. People use the word  
10    "metal" in the airline industry, and metal neutrality has  
11    just come to mean that we are sharing enough revenue that we  
12    are willing to try to plant the best networks, even if it  
13    means some people will fly your plane instead of mine.

14               It does not mean the things at the bottom, right?  
15    It does not mean pricing coordination. I will note in  
16    international joint ventures, it generally does. They have  
17    antitrust immunity, so they can coordinate prices, but here  
18    it does not mean that. It does not mean the homogenization  
19    of business models and it does not mean any -- and also,  
20    importantly, as Mr. Hayes and others have testified to, it  
21    does not mean that you're not competing for the customer. So  
22    you are competing for your credit cards and your loyalty, and  
23    so on. Just for the flight, you're not -- you're generally  
24    indifferent about whose plane it is.

25    **Q.** Are you familiar with the Department of Transportation's

1 evaluation of those international airline joint ventures?

2 **A.** Yeah, very much so. I've been involved in several of  
3 those. I've written the paper about the history of those.

4 **Q.** Do those international joint ventures typically have  
5 revenue sharing?

6 **A.** Not only do they have revenue sharing. My understanding  
7 is that the Department of Transportation's view has been that  
8 that revenue sharing is important enough to unlock the  
9 benefits, because it creates the incentives to jointly plan  
10 the network, that they see revenue sharing as a prerequisite  
11 to giving antitrust immunity. They also generally have joint  
12 network planning and joint pricing. But the revenue sharing  
13 sharing is an inherent -- I think a required part of them.

14 **Q.** So what have you observed about the impact of these  
15 airline joint ventures -- international airline joint  
16 ventures on competition?

17 **A.** So I mentioned briefly in my qualifications a week ago  
18 that one of my papers on airlines is a worldwide study across  
19 all of the airline alliances. These are the international  
20 airline alliances that existed. So it puts them all together  
21 in one giant dataset, and it studies what's happened. If  
22 finds they've been very procompetitive. They've expanded  
23 output, they've lowered prices. They've expanded output on  
24 connecting routes, on nonstop routes generally.

25 Two things I would note just quickly that really

1 jump out of the study, and that a lot of the paper is about.  
2 One is that, although, as we're hearing in this case, in many  
3 of those cases there's a theory of harm that may be on  
4 nonstop overlaps, where the two parties both flew before.  
5 There will be a reduction in competition and a reduction in  
6 capacity.

7 In fact, they've gone the other direction. The  
8 nonstop overlaps are important routes. There's been lower  
9 prices and more capacity on those routes. They benefitted  
10 the nonstop overlaps. That's a strong finding in the paper.

11 And number two, I would say, is that American's  
12 alliances in particular, which are the ones that have things  
13 like the MGIA that form the basis, I'll tell you it jumps off  
14 the page that American's alliances have led the way in terms  
15 of lower prices and more capacity. That is the single most  
16 apparent study finding in the study.

17 **Q.** Dr. Town argued that the lessons from the international  
18 joint ventures may not apply here, because the NEA has more  
19 overlap routes than the typical international alliance. What  
20 do you say to that?

21 **A.** Yeah, I disagree, certainly, that you can't learn  
22 lessons. I mean, obviously, we're talking about this  
23 alliance and it's unique characteristics, and we should. But  
24 there are important lessons from those international  
25 alliances. I would say, two, one is there is a lot of talk

1 here about nonstop overlaps and concern about potential harm  
2 on nonstop overlaps. But in the international alliance case,  
3 we haven't seen it. It hasn't come to pass. Their nonstop  
4 overlaps -- there they have antitrust immunity, so they can  
5 talk about prices, yet the nonstop overlaps have seen more  
6 capacity and lower prices.

7           Number two is Professor Town did something where he  
8 said the airlines have more airports in common, there's more  
9 overlap of their network, so maybe there's less benefit. But  
10 I actually think -- this deal, interestingly, is sort of a  
11 geographic combination in similar way to the international  
12 ones. Right? One point is that JetBlue doesn't -- you know,  
13 American has a lot of international presence. I think when  
14 Professor Town did his counts of airports, he left out  
15 international airports, but one thing JetBlue gets like in an  
16 international alliance is a better international network.  
17 JetBlue also is weak in the Midwest or outside of New York  
18 and Boston, so it gets that geographic strength. American,  
19 as we've heard a lot about, is relatively weak in New York  
20 and Boston. So American gets that geographic strength. So  
21 in fact, while it might not be true of any domestic alliance,  
22 this one really has a lot of those same geographic  
23 components, it's strengthening JetBlue on the -- sort of two  
24 ends of the barbell. It's strengthening American in New York  
25 and in Boston.

1     **Q.** I want to move on to the particulars of the MGIA revenue  
2     sharing formulas, and to do that, I'm going to start by  
3     asking you to have Plaintiffs' Exhibit 450, which is in  
4     evidence, put up. And this is a presentation that was made  
5     by the parties to the antitrust division back in July of  
6     2020.

7             Are you familiar with this presentation?

8     **A.** Yes, I was involved in helping to put it together. But I  
9     think it was an American -- presentation that American had  
10    used, as I recall, to explain the MGIA, but I helped to sort  
11    of tweak it for presentation to Justice.

12    **Q.** Okay. Let's pull up the slide that has -- slide 4, the  
13    "MGIA agreement overview." And just very briefly, if you can  
14    describe what we're seeing here.

15    **A.** Sure. So this is, on the top, is stuff that you've heard  
16    a lot. So it's just the route scope. It basically says it  
17    includes all American, domestic international flying from the  
18    four airports, same for JetBlue, B6 in their code, same for  
19    JetBlue, except for JetBlue's transatlantic flying. The one  
20    thing that is not mentioned here, because it came later in  
21    the deal, is it also looks -- it excludes the carve outs.

22    **Q.** So I'll stop you there for a moment. There's been some  
23    discussion about the competitive implications of the fact  
24    that, while JetBlue's transatlantic routes are excluded from  
25    the revenue share, American's transatlantic routes are

1 included. How do you assess that competitively?

2 **A.** Well, I heard some sort of general discussion without  
3 analysis, I think, from Dr. Miller, that maybe that could  
4 create some incentive for JetBlue not to compete as  
5 aggressively, because it shares in the American revenue. I  
6 haven't seen him run through any analysis of that. I would  
7 just say two things jump out to me about international  
8 flying. I mean, if I was going to think about the bigger  
9 question, which is has the NEA helped or hurt international  
10 flying, one is that JetBlue has entered those routes, like  
11 the route to London. And one thing I know in airline  
12 economics is having a really strong network at your base is  
13 really -- has to be attracting more passengers, you can  
14 compete for business travelers with Delta. That's really  
15 important to being able to get people to fly internationally.  
16 So a big part of the equation for JetBlue is the NEA makes  
17 them stronger in Boston and New York. They have a better  
18 foundation to the house, to go build international travel.

19 The second thing is, I think, unquestionably true  
20 is that American has expanded its international flying out of  
21 New York, and it continues to do so. That's substantial. I  
22 think a fair characterization is what Mr. Raja said, which is  
23 American has basically built a third long-haul hub in New  
24 York. So international competition in New York seems to me  
25 to be a prime beneficiary of the NEA.

1     **Q.** Okay. Going back to slide four, the bottom half of the  
2     page is entitled, "NEA net revenue." What do you understand  
3     that to mean?

4     **A.** I think the very phrase at the bottom there says, "Net  
5     revenue is essentially passenger-related revenue less selling  
6     expenses." That's the right way to think about it. So it's  
7     the revenues associated with having a passenger on board,  
8     which is, you know, passenger revenue and some fuel  
9     surcharges, frequent flyers, the things that are listed  
10    there. What's subtracted from them are basically selling  
11    expenses, fees associated with credit cards, fees you pay to  
12    a travel agent. GDS is a global distribution system, so the  
13    fees they -- it's the services that sell the ticket and  
14    global distribution systems. I really think of that as  
15    like passenger revenue minus selling expenses, so sometimes  
16    that's called like contra-revenue, but it's sort of that --  
17    it's ultimately just the net revenue associated with the  
18    passengers.

19           I would note one thing it does not include is the  
20    ancillaries, so it does not include bag fees. It does not  
21    include change fees that you pay if you change your ticket.  
22    It doesn't include the fee you pay if you sign up for WiFi on  
23    the plane. It also doesn't include any fees, any sort of  
24    add-ons that come from the loyalty program. So if somebody  
25    flies and signs up for your loyalty program and then flies

1 with you a lot more outside of the NEA, none of that would be  
2 included.

3 **Q.** Did Dr. Miller pick up that distinction between passenger  
4 revenues and ancillaries?

5 **A.** In his model, he did not. So his model does not note  
6 that ancillaries aren't included. And just to pause on that  
7 for a second, because it matters in the economics.  
8 Dr. Miller talked a lot about recapture and he had this  
9 theory that there may be -- there's some pressure to raise  
10 your prices, because you can -- if American raises its  
11 prices, it can recapture some revenue from JetBlue. In his  
12 model what he's assuming is recapture includes all of those  
13 ancillaries, so the recapture in his model includes bag fees,  
14 it includes all of the loyalty benefits that include flying  
15 to other places. So it's just mathematically incorrect, it  
16 doesn't include any of that, so the recapture incentive is  
17 just wrong in his model.

18 **Q.** How is the MGIA treatment of costs different than what  
19 you would find in a profit-sharing arrangement?

20 **A.** The only costs that are included are these selling  
21 expenses. The rest of the costs of planes and running an  
22 airline are not included.

23 **Q.** Okay. Let's turn to the next slide, please. This one is  
24 entitled "MGIA mechanics." It's slide 5 in the exhibit.

25 Please describe what's depicted here?



1     **A.** So this one, a few equations on the page, but this is I  
2     think very important for Your Honor -- I know you've been  
3     hearing a lot about this and this kind of gives you some of  
4     the formulas. And I'll actually do a numerical example of  
5     this and play it later.

6             THE COURT: Just before you get to that, just back  
7     on the costs and the revenue. So if I read this right, one  
8     component -- one additional component of cost is any cost  
9     driven directly -- well, do you want me to not read that?

10            MR. WALL: No, that's fine.

11            MR. SCHWED: From a confidentiality perspective.

12            MR. WALL: I think that's fine for you to go ahead  
13     and say that.

14            THE COURT: "Any cost driven directly by  
15     incremental passenger volume and mutually agreed to by the  
16     parties." What would qualify as something like that, a cost  
17     driven directly by incremental passenger volume?

18            THE WITNESS: I think all that's been agreed to,  
19     although I'll defer to the parties if they've added anything  
20     else, is selling expenses. I suppose that would anticipate  
21     something like you can talk about whether you want to include  
22     food costs or something, because that would be something --  
23     if you have one more passenger on -- it's not just -- a lot  
24     of the costs are just associated with flying the plane.

25            THE COURT: Sure, you own the plane, you pay for

1 the plane. I assume that the fuel cost isn't varying that  
2 much, at least on the bigger planes, based on how many people  
3 are on them.

4 THE WITNESS: Very little. But it does vary -- it  
5 could vary how much food you serve, how many pretzels do you  
6 need to serve, how much food service do you have. That would  
7 be an example of a passenger variable cost. I don't think  
8 that's included here, but I think it's -- that's sort of --  
9 it's a very small percentage of the cost.

10 THE COURT: It's a fine definition of included  
11 costs, what I just read to you?

12 THE WITNESS: Right. I think it said agreed to by  
13 the parties.

14 THE COURT: Right. And mutually agreed to by the  
15 parties. Correct.

16 BY MR. WALL:

17 Q. Okay. Let's get back to the --

18 THE COURT: Sorry, go back --

19 MR. WALL: Yeah, mechanics slide, and dive into  
20 formulas, so pick up.

21 THE WITNESS: Everybody's favorite thing to do on a  
22 Monday morning. So this is net revenue, so this is the  
23 revenue that gets -- and the net revenue gets contributed to  
24 the total net revenue pool. And this slide is really the  
25 heart of revenue sharing, over the next couple of slides. So

1 the place to start is on base revenue, because I know that  
2 you've heard testimony about base revenue and I want to  
3 explain what base revenue is. So base revenue is defined as  
4 this multiplication on here. So the first term is unit  
5 revenue, it's baseline unit revenue. So that is in the base  
6 year of the contract, 2021, and the base year of the  
7 contract. It's defined as the unit revenue, which is revenue  
8 divided by capacity. So how much money did you make divided  
9 by how many equivalent seat miles did you fly. That gives  
10 you a unit revenue. That's defined in the baseline.

11 **Q.** That's this idea of RESM?

12 **A.** Yeah, that's RESM, but that's baseline RESM. And that  
13 gets multiplied by current year capacity. So it's baseline  
14 say 2021 RESM, times current year, say 2022, or whatever year  
15 it is, capacity. Right? That's really distinct to the MGIA  
16 and important to a lot of what you heard, because it has two  
17 effects that matter and are different from fixed proportion  
18 revenue sharing or other revenue sharing. One of those  
19 effects is that your base revenue that you take out of the  
20 pool depends on your current capacity, not your starting  
21 capacity. So as you add capacity from year to year, you get  
22 more baseline. You get -- your position goes up. So that's  
23 an incentive to grow, because your base position goes up.  
24 That was chosen intentionally. That would be absent from  
25 more standard revenue sharing where it's just a 50/50 split

1 here.

2 The second point that matters here is that that  
3 current capacity gets multiplied by the starting RESM.  
4 Right? It gets multiplied by the RESM in 2021. The reason  
5 that matters -- the parties refer to this --

6 THE COURT: It's 2021 or 2019.

7 THE WITNESS: Is it 2019?

8 MR. WALL: The base year is 2019.

9 THE WITNESS: Sorry, I've been saying it wrong. My  
10 mistake.

11 So it's defined as 2019, the base year. And the  
12 reason that matters is -- you've heard a lot about that, it's  
13 normally when you add capacity, the standard effect is that  
14 shifts the supply fare route and it puts downward pressure on  
15 your unit revenue. It puts downward pressure on your price.  
16 Right? What this is doing is that -- parties call it  
17 de-risking effect. One reason that you hear all of the time  
18 from airlines that they're worried about adding capacity is  
19 maybe it will add capacity and it will push our RESM down to  
20 the point where that capacity is not profitable. This is  
21 telling each other, no, the base position that you get is  
22 starting RESM. So it's always 2019. So if add it and it  
23 reduces your RESM, your base position is still based on 2019  
24 base position. All right.

25 The parties refer to this as de-risking. In the

1 event that they add capacity, and it pushes that RESM down,  
2 their base position does not push down accordingly, and any  
3 pain from that is shared between the parties. All right. So  
4 they refers to this as de-risking, it basically lets you add  
5 capacity in a way that has less risk because you share that  
6 with your partner. So both of those effects are concurrent  
7 with the fact that its RESM with capacity and the fact that  
8 you get this base RESM credit for that, or are intentionally  
9 chosen, and both of those give you an incentive to add  
10 capacity.

11 **Q.** Now, there is a distinction in the contract, is there  
12 not, that between the RESM, depending upon short-haul and  
13 long-haul flying, and we've heard about the stage length  
14 adjustment. Could you address that?

15 **A.** Yeah. Sure. So the base RESM is not just one number in  
16 the contract. It's a different number for JetBlue and  
17 American, for one thing. And I'll show an example of this.  
18 And it's -- so JetBlue has their starting value in 2019,  
19 American has their starting value in 2019. That's what they  
20 get credit off of. It's also distinguished by whether the  
21 flight is longer than 3,000 miles, whether it's a long-haul  
22 or not. That's a different number. Now, that only applies  
23 to American. JetBlue doesn't fly anything that goes  
24 3,000 miles. So you end up with three buckets, a short and  
25 long-haul for American, and one for JetBlue.

1           You mentioned the stage length adjustment, so I'll  
2   do that briefly. I know Professor Miller mentioned the stage  
3   length adjustment, but honestly, I think he got that wrong.  
4   And I'll show you this in the example. But all the stage  
5   length adjustment is is you think about, within one of those  
6   buckets, you could increase your capacity either by adding  
7   seats or by making your flights longer. Right? There's two  
8   ways -- you can think about it as seat miles. You can make  
9   your capacity more by doubling your seats or making your  
10   average flight longer. All the stage length adjuster does is  
11   it slightly down-weights the credit that you get if you do it  
12   in miles, so that it puts somewhat more emphasis on adding  
13   seats rather than adding miles. But that's all within bucket  
14   and it's just putting them a little bit more emphasis on  
15   seats as a source of capacity.

16   **Q.** Dr. Miller seemed to go out of his way to say that one  
17   can increase base revenue by flying shorter routes. Is that  
18   right?

19   **A.** No. I mean, no. Your capacity -- you get more revenue  
20   when your capacity goes up and your capacity goes up when  
21   your seat miles go up. It's just that there's a --

22           THE COURT: Well, but all other things being equal,  
23   doesn't the fact that the adjuster is the base period stage  
24   length divided by the current period stage length, doesn't  
25   that place -- within that part of the formula, doesn't that

1 preference shorter flights?

2 **A.** Shorter flights still add miles, it just puts -- I'm  
3 going to do a numerical example. It's in the contract in a  
4 minute, it might be easier to show how it actually works.  
5 What it does is it says if you -- it preferences increasing  
6 your capacity by seats, as opposed to by miles. So if you've  
7 increased your miles, it slightly down-weights the amount of  
8 credit you get. It does not mean you're better off to make  
9 your flights shorter, right, because that will reduce your  
10 mileage, and that's bad for capacity. It just means that  
11 if -- to the extent your mileage has gone up, you get  
12 slightly less credit for that. And I really think that will  
13 be more clear in a minute when I show how it works in the  
14 example.

15 **Q.** And you're going to use an example that's actually found  
16 in the MGIA itself, right?

17 **A.** Yeah, the last page of the MGIA has a worked example and  
18 I want to walk through it, because I think that will help  
19 with a lot of this.

20 **Q.** Okay. We'll get to that in just a second. I want to go  
21 back to this slide of the MGIA mechanics and cover the lower  
22 half of it of what incremental revenue is. If you can  
23 address that, please?

24 **A.** Yes. So incremental revenue is just -- you know, you  
25 each take out your base position, and incremental revenue is

1 just how much revenue is there in the pool relative to the  
2 base positions. So the base positions, it could be positive  
3 or negative, you take out your two base positions and then  
4 there could be some revenue left over, or it comes up short,  
5 and that's incremental revenue.

6 **Q.** All right. Then, if we go to the next slide, this is  
7 addressing how incremental -- incremental revenue is split,  
8 right?

9 **A.** Right. So this is the sort of punch-line to what I was  
10 just saying, so if -- incremental revenue is the amount of  
11 revenue above and beyond the base positions. That gets  
12 divided between the parties based on their current period  
13 capacity shares. So this is the third place where the MGIA  
14 builds in a capacity expansion incentive. Which is if you  
15 talk to the parties about this, or any of their international  
16 alliances, their focus, as we've heard in court, is these are  
17 going to create new opportunities. These are going to create  
18 additional demand, and therefore, create additional profits.  
19 So any time you talk to Mr. Raja or anyone about this, or  
20 other alliances, their view is it's creating upside. Right?  
21 And so the question is, how do you divide up that upside.

22 And what they've built into the MGIA, which, again,  
23 is unique to the MGIA, is that the split depends on current  
24 capacity. It doesn't depend on where I started. It's not  
25 50/50. It depends on current capacity. So if I want more of



1 the upside, I have to have more capacity. Right? So if I  
2 think this is going to be good and I want my part of that, I  
3 have to keep adding capacity to keep my piece of the pie big.  
4 If the other guy adds capacity and I don't, his piece of the  
5 pie gets bigger. It really creates, within alliance,  
6 competition on capacity to determine who gets a bigger piece  
7 of the pie.

8 **Q.** Let's pause on that point for a moment, because as you  
9 know, Dr. Miller argues that there's a kind of  
10 too-good-to-be-true quality to this, because of what he calls  
11 incentives to exploit the partner. What's your reaction to  
12 that?

13 **A.** Yeah. I mean, this was -- it's intentionally what they  
14 built. So it's not too good to be true. It is what's here  
15 and it's really -- I mean, I think the parties have described  
16 it well. It is creating a "skin in the game" is a phrase  
17 that I've heard them use that I kind of like. Each partner  
18 has an incentive to grow capacity in order to capture its  
19 piece of the pie, and that's something that they've done on  
20 purpose. And really, it's because I think they're worried  
21 about exploitation in the reverse.

22 I think the concern is if the network is really  
23 good, we don't want -- both partners, I think Mr. Hayes said  
24 this, they don't want the other guy just sort of free riding  
25 off of that and taking their share of the profits. They want

1 the other guy adding capacity, too. So they're -- in essence  
2 what they're doing here is saying you've got to add capacity  
3 to keep getting your piece. If you don't add capacity, your  
4 piece is going to go down. That solves this free riding  
5 problem that economists worry about. We want to make sure  
6 both sides are investing into the network that's being  
7 developed.

8 **Q.** Okay. Let's move on to the next slide, which is about  
9 the carrier's retained revenue. Can you take us through this  
10 one?

11 **A.** So this is now hopefully simple, given what we've just  
12 been through, which is retained revenue is just your base  
13 revenue plus your share of the incremental revenue. That's  
14 just summing up the pieces.

15 **Q.** And then finally, there's a slide on the transfer  
16 payments that may be required. Take us through this one.

17 **A.** Again, this is -- it's transfer payments and I think I  
18 heard Your Honor get this earlier in the case and ask a  
19 question. The transfer payment are just a true up. So you,  
20 in the normal course of your business, you make some revenue,  
21 you have your piece of net revenue. What the MGIA says you  
22 get is base revenue plus your share of incremental and you  
23 receive a transfer payment to true up, so that you're  
24 retained revenue is correct.

25 **Q.** So the form of the sharing is a transferred payment from

1 one party to the other?

2 **A.** Right. So the sharing gets you to an amount you're  
3 supposed to get and then the way that is implemented, the  
4 form of that is just to make the payment in whichever way it  
5 needs to go.

6 **Q.** Okay. Let's turn now to defendants' Exhibit 0093, which  
7 is the MGIA, in appendix 4, at the very end. And what's  
8 entitled, "Worked examples." What is this?

9 **A.** So this is the example that the parties themselves  
10 included in the contract to illustrate the MGIA. If it would  
11 be okay, I think it would be worth me just sort of walking  
12 through this, because it implements everything I just said.

13 **Q.** I'd like you to do that, but before you do, I want to  
14 just ground it in one observation here. So what is happening  
15 to NEA capacity in revenues in this worked example?

16 **A.** So you can see that on the first couple lines, but the  
17 bottom line is capacity goes up a lot between the base period  
18 and the current period. I think 2019, 2022. Capacity goes  
19 up a lot and revenues go up a lot.

20 **Q.** Okay. So this is an example, then -- this is a growth  
21 example where both sides to the alliance have grown in  
22 varying degrees?

23 **A.** Correct. They've both grown and revenue has gone up.  
24 But it then shows what happens when you bring in these base  
25 concepts and so on, that leads to a transfer payment between

1       them based on growth.

2       **Q.**   Okay.  Go ahead and please take us through it.

3       **A.**   Okay.  So the top -- so what's labeled A and B, the first  
4       two rows, those are the base period numbers, so AA has 32  
5       billion ESMS in short-haul, 13 million in long-haul and for  
6       45 billion total.  JetBlue has \$45 billion in total, \$90  
7       billion in the NEA, they make \$8.7 billion on that.

8               So then what happens is they both grow into the  
9       current period.  And just to cut through the numbers quickly  
10      to help, American grows from \$45 Billion to \$55 billion.  So  
11      it grows to 35 plus 20.  JetBlue --

12             THE COURT:  Hold on.  Just -- oh, I see.  32 to 35,  
13      and 13 to 20.  Okay.

14             THE WITNESS:  So they grow a total from 45 to 55.  
15      JetBlue grows from 45 to 60.  So there's slightly more growth  
16      for JetBlue, or significantly more growth, actually, for  
17      JetBlue.

18             Revenues go up to a total of 10 billion.  So  
19      American's different divided across long-haul and short-haul,  
20      but they make 4 billion, JetBlue in this example makes 6  
21      billion.

22             Okay.  So the things to note there are first what  
23      Mr. Wall asked me, that their growing capacity, their growing  
24      revenue.  The second thing to note is that JetBlue's capacity  
25      is growing by more.  Right?  JetBlue in this worked example

1 that the parties put in is the one who has increased their  
2 capacities more.

3 Okay. So then that's simple stuff.

4 Then we move down to the next thing that  
5 says, "Calculation of base period unit revenues." So that is  
6 doing this division that was on a few slides ago. Right? So  
7 that is saying in the base period, we divide -- so in that  
8 first number, we divide \$3 billion, divided by \$32 billion  
9 ESMs, and we get a base period RESM, revenue per ESM of 9.38  
10 cents. Okay. And then it does the same calculation 0for AA  
11 long-haul and for JetBlue short-haul.

12 **Q.** But not for the NEA as a whole?

13 **A.** Correct. It does it for each of them in their separate  
14 categories. That's what I talked about there really are  
15 three separate numbers. Okay. So I want to pause here and  
16 just point something out. Which is revenue, as Mr. Wall  
17 asked me, has -- actual revenue has gone up from 8.7 billion  
18 to 10 billion. Right? But if you compare these unit  
19 revenues that have just been computed to what the  
20 corresponding unit revenue calculation would be in the  
21 current period, as expected with capacity growth, unit  
22 revenue has gone down. And let me just give a couple numbers  
23 to show what I mean. So if we go over to the one that says  
24 "B6 short-haul services," we can see that, in base period,  
25 B6's revenue was \$5 billion, their capacity was \$45 billion.

1 So their unit revenue was 11.11 cents.

2 In the base period -- or in the current period,  
3 their capacity is 60 billion, their revenue is 6 billion. So  
4 fortunately, that's easy division to do in my head. That  
5 gets you to ten cents.

6 **Q.** Which is not shown, but you're just deriving that from  
7 those numbers?

8 **A.** Correct. Because current period RESM isn't necessary for  
9 the formula. It plays out in terms of what happens. But  
10 so -- and that's true across all three buckets. The parties  
11 have shown an example here where you add capacity and your  
12 unit RESM goes down.

13 **Q.** So at this point, the formula is going to use the 11.1  
14 cents figure, rather than the 10 cent figure.

15 **A.** Yes.

16 **Q.** Okay. So then we go down to number two, which is  
17 calculus. And now we're going to calculate the base period  
18 revenue amount, which, as I said, is basically it's just  
19 current capacity times your base period RESM. That's the --  
20 you grow with capacity, you get your base period RESM. It  
21 doesn't go down. So that's the first two rows that have not  
22 been highlighted. It would be you multiply those two  
23 together.

24 There's actually a typo on the example. The  
25 current period capacity for JetBlue is 60 billion ESMS. It

1 shouldn't have a dollar sign by it.

2           The -- so that's your -- that's the thing that you  
3 would multiply together. Now because Your Honor asked me a  
4 question about this and I said I would come back to it. I  
5 will spend a minute on the stage length adjuster. So that's  
6 the slight wrinkle in this multiplication. So the next  
7 number down looks at what their base period stage length was  
8 within each bucket, so how long within each bucket were they  
9 flying on average.

10           And then if we go down -- I don't know if we can  
11 show both pages on the screen at once. It would be helpful.  
12 Perfect. I think. No we can't, I guess.

13           So we had those base period stage lengths we were  
14 just looking at. The next line down is current period stage  
15 lengths, right? And you'll see the current period stage  
16 length -- thank you -- the current period stage length has  
17 gotten a little bit longer. Okay? So that was the question  
18 you asked me about. It got a little bit longer. So some of  
19 the increase in your ESMs was because your flights are  
20 slightly longer. So you asked this correctly, what the  
21 formula then does is it divides the base period times the  
22 current period -- or divides the base period divided by the  
23 current period. So in that first, for AA short-haul, that  
24 would be the 1035 divided by 1058. Right? That gives you a  
25 ratio that's slightly less than one, and then it -- now it

1 gets funky or fancy. It takes that ratio and it raises it to  
2 the power of the coefficient. So it takes this ratio and it  
3 raises it to a power that is slightly less than one, or  
4 somewhat less than one. That's just the formula they use.  
5 When you do that, it takes --

6 THE COURT: Is that how you read the language for  
7 such services raised to 0.62?

8 THE WITNESS: Raised to the 0.62. Yes.

9 THE COURT: So that's raising it to a power as  
10 opposed to setting a floor of 0.62.

11 **A.** Correct. And I think part of why they put this worked  
12 example in in the contract is so you could see them doing the  
13 math, so it could clarify what they meant.

14 So when you raise it to that -- when you raise a  
15 number that's slightly less than one to a power that's less  
16 than one, it makes the number even closer to one. Now we're  
17 going back to math from a long time ago, but -- so you end up  
18 with these stage length adjusters that are listed there.

19 Can we just go back to the second page now? It's  
20 easier to see. You go to the -- you get the stage length  
21 adjusters that are very, very, very close to one. So that's  
22 what I was saying earlier. What happens is you take the base  
23 period RESM times the current period capacity, and then you  
24 just multiply it by this number that's slightly less than  
25 one. That's just, as I said, slightly down-weighting the



1 extra that you get, because some of it came from longer stage  
2 length.

3 BY MR. WALL:

4 **Q.** So just to nail this down here, for the three different  
5 buckets, the actual adjustment turns out to be basically  
6 multiplying by 0.98, 0.99, 0.99?

7 **A.** Correct.

8 **Q.** Okay.

9 **A.** So then we have our base period revenue amounts. Okay.  
10 So that's the base period amount that you were entitled to,  
11 right? The rest of it gets into figuring out incremental  
12 revenue.

13 **Q.** Just -- I want to pause here just to make one point here.  
14 So that if we look over in the right hand, the NEA column,  
15 the adjusted base period revenue amount is 10.96 million,  
16 which is larger than the actual revenue that the parties  
17 earned during this period of time, right?

18 **A.** Correct.

19 **Q.** So this is essentially a fictitious number that is a  
20 product of the formula.

21 **A.** It's the number in the contract, it's the number that  
22 captures this idea that the capacity that was added pushed  
23 down RESM a little bit, but that wasn't -- the base period  
24 didn't count that against you. So even though their actual  
25 revenue went up from 8.7 to 10, they say we're going to have

1 this number, 10.9, which we're going to call the base, and  
2 that base is going to drive how we share revenue.

3 **Q.** Okay. So go ahead, please.

4 **A.** So basically what you'll see in the next numbers down is  
5 what --

6 THE COURT: So what you're saying is that's  
7 basically saying that the base -- they're sharing the base,  
8 if you will, at the RESM from 2019, even though, in theory,  
9 and in this example, the increase in capacity decreased  
10 price.

11 THE WITNESS: Correct.

12 THE COURT: Okay.

13 THE WITNESS: So you see that, what you just said,  
14 in the next few numbers down, you see under the NEA column,  
15 we see 10 billion, then we see 10.96 billion, and then we see  
16 a difference of 960 million, basically. And I don't know if  
17 you can highlight those, but in the next three numbers down  
18 under NEA. Thanks. So that was what you just asked.  
19 They're saying we actually made more money, but because the  
20 base was a little higher, into this one, the incremental  
21 revenue as it's defined is negative 960. As Mr. Wall said,  
22 that's sort of a function in the way they want to share  
23 revenue. Revenue went up, but they're not taking -- they're  
24 giving each other credit for base RESM, even though RESM went  
25 down.

1     **Q.** So even though revenue is going to go up, they're now  
2 going to share and split a negative number?

3     **A.** Yes. And the way they're going to split it is they're  
4 going to look at each of American and JetBlue -- or  
5 basically, they're going to split it according to current  
6 capacity. All right. So here is sort of the thing to get  
7 that's a little subtle. If you look at the JetBlue number,  
8 JetBlue's actual -- if you recall this, JetBlue's actual  
9 revenue in the current period was 6 billion. JetBlue's base  
10 period revenue was 6.6 billion. So because JetBlue grew the  
11 most, a lot of this negative action that's happening in this  
12 negative 960, a lot of that is coming from JetBlue. 640 out  
13 of the 960 is coming from JetBlue, which is what you would  
14 expect, because JetBlue grew the most. They had the most of  
15 this action happening. Right? But the way that the formula  
16 works, that doesn't -- JetBlue doesn't get docked for that  
17 full 600. It gets divided up based on their current period  
18 capacity, which is basically 50/50, 52/48.

19             So row M on here, what that is doing is taking the  
20 negative 960 million, dividing it up between the carriers,  
21 based on their capacity, and so the JetBlue piece of that is  
22 500 -- just under 500 million. The American piece of that,  
23 when added up, is slightly less than that.

24     **Q.** I think we need to highlight the row M below that, that's  
25 right after J, right?

1     **A.** It's the same one. The row M, it just gets repeated. so  
2 we've got -- it's also that one, that works.

3     **Q.** Okay.

4     **A.** It's the same as the row M above.

5     **Q.** So take us home. What happens here at the end?

6     **A.** So basically now we just -- we know how much revenue --  
7 so you just add up their base period and they retained  
8 incremental revenue, and you get what revenue they should  
9 have retained under the formula, that's the 2.9, 900, and  
10 6.1. We know what they actually retained from way above what  
11 they actually made in the real world was 5, 1, and 6.

12             And so then we get to the transfer payment which is  
13 JetBlue's -- the 6 billion that JetBlue actually made is  
14 slightly less than the amount that JetBlue got credit for.  
15 Again, because JetBlue got credit that didn't include that  
16 capacity reduction effect, and so JetBlue received a transfer  
17 payment. And basically what that is doing is saying JetBlue,  
18 you added more capacity, so you came up about 600 million  
19 short. If we didn't give you that price degradation, you  
20 would have only come up about 500 million, so we're going to  
21 pay you the extra. We're going to -- and this is the effect  
22 in this worked example of American is subsidizing JetBlue,  
23 because in this example, JetBlue grew more, and JetBlue had  
24 more of the associated capacity effect.

25     **Q.** And every year, this is going to be repeated, based upon

1 different inputs of revenues and capacity?

2 **A.** Yes. And this, again, is an example, and every year it  
3 will be done on aggregate capacity and the same math will be  
4 done, and it will play out how it plays out, but there's a  
5 basic logic that you do this math, you figure out what the  
6 base period was relative to what happened, and then economics  
7 tells me that's going to tend to result in the subsidy of the  
8 guy who grew more. That all continues.

9 **Q.** So what is the combined effect of these terms on the NEA  
10 carriers incentives to add capacity?

11 **A.** You mean the overall MGIA terms?

12 **Q.** Yes.

13 **A.** I mean, it's the three things that I went through.  
14 There's this -- I guess two things, there's the de-risking  
15 effect that we see where, which is if you're in the sort of  
16 starting world, where adding capacity reduces your RESM, then  
17 this de-risks it and you get some subsidy from your partner  
18 to help with that, which is growth encouraging.

19 Number two is, if you're in the world, which,  
20 again, is what the parties spend most of their time talking  
21 about, which is the NEA has unlocked new profit  
22 possibilities, then you have to grow your share. Your share  
23 of that depends on your share of capacity, so you have to  
24 grow capacity to capture that. So there's sort of a  
25 de-risking effect and an upside effect, both of which lead to

1 a capacity expansion incentive.

2 **Q.** So do you understand Dr. Miller to disagree with anything  
3 you have said about the mechanics of the MGIA and what its  
4 incentives would be.

5 **A.** I certainly don't understand him to disagree with any of  
6 the math of the MGIA, and I haven't heard him in his report  
7 present any analysis anywhere that would say that these  
8 effects that I've just described don't exist.

9 **Q.** In your report, did you present a formal economic proof  
10 of your conclusions about incentive effects from the MGIA?

11 **A.** Yeah. I -- I focused the proof on the de-risking effect,  
12 which is what happens in the sort of normal starting case,  
13 where increasing capacity pushes down RESM.

14 **Q.** Why did you focus on that?

15 **A.** Well, my understanding from discussions in the  
16 investigation and what I had read was that if we're in the  
17 upside case, where the NEA has created new growth  
18 opportunities or new profits, I don't think there's dispute  
19 that that would create an incentive to go capture them. What  
20 I had heard more questions about was how does this de-risking  
21 effect work, and does it really work. And so I went and did  
22 an economics proof based on this basic proposition that  
23 increasing capacity decreases RESM to show that it does work.

24 **Q.** Can we just look at that briefly and we'll put up  
25 Appendix A2 to your expert report, and a couple pages on the

1 screen together, and I will be merciful and not take us  
2 through that algebra, but can you just describe generally  
3 what is shown here? What you did?

4 **A.** It's just math for this point that as long as it's true  
5 that the increasing capacity reduces your RESM, then by  
6 de-risking, by sharing that with your partner, your  
7 incentives to increase capacity go up.

8 **Q.** Did Mr. Miller challenge your formal proof?

9 **A.** I have not seen any challenge of the proof. I just  
10 quickly will note the one thing that Dr. Miller has brought  
11 up in his report and in here is his recapture effect that he  
12 talks about. So his point is -- what I've been stressing is  
13 that your partner shares in your risk that comes from  
14 expanding your own capacity. What he's talked about is that  
15 you share in your partner's revenue, so you share what your  
16 partner does. Really, what the proof is showing is just the  
17 effect of your own capacity on your own price is bigger, and  
18 that's your own supply curve. That's bigger than the effect  
19 it has on anybody else. And so the de-risking effect slumps.  
20 It wins over the recapture effect. Because OM price effects  
21 are bigger than effects of others, as long as that's true,  
22 which we expect in economics, then this effect means even  
23 incorporating the recapture effect that Dr. Miller talked  
24 about, the incentives are going to grow, which puts downward  
25 pressure on prices.

1     **Q.** Okay. I want to move forward now -- thank you for that.  
2     I want to move forward to what Dr. Miller says about the use  
3     of NEA capacity coordination to behave consistent with what  
4     he calls joint profit maximization. In other words, that  
5     carriers will reduce capacity and raise fares. You're aware  
6     of that testimony, right?

7     **A.** Yes.

8     **Q.** And what is your response to that?

9     **A.** Well, generally -- I mean, just to make sure I'm clear on  
10    how I talk about it, I heard Dr. Miller say two different  
11    things, two arguments he made. One is, when it comes to  
12    capacity, the parties are just going to -- they're not going  
13    to pay attention to the incentives that are in the MGIA.  
14    They're going to somehow get together, act more like they're  
15    merged, and reduce capacity. They -- to me that makes no  
16    sense as a matter of economics. They're not merged. They do  
17    have the MGIA. They chose it on purpose. It's the contract  
18    that guides them. So it's inconsistent with economics to me  
19    to say they're going to ignore what they signed. So that's  
20    the first argument that I heard him make. I'm happy to  
21    explain more.

22                 But the second one, though -- when he gets -- so  
23    that was his argument about capacity, right?

24                 When he gets to pricing and does his simulation, I  
25    heard him say he's just going to take capacity out of the



1 picture. He's going to assume capacity is sunk, I think was  
2 his word. It's already been set. And he's going to model  
3 prices abstracting from capacity. Assuming capacity has  
4 already been determined. Right? To me, that's even more of  
5 a problem, because capacity is the most important variable in  
6 the economics of airlines to determine prices. So the  
7 pricing model that leaves capacity out just cannot make  
8 predictions about what price effects will be.

9 **Q.** Okay. I want to focus on both of those points in order.  
10 Let's begin with the idea that the parties will ignore the  
11 specific terms of the MGIA and behave differently.

12 Is that a normal assumption that economists make  
13 about business behavior?

14 **A.** No, that assumption doesn't make any sense to me in  
15 general or here. Let me just tell you quick and give you the  
16 reasons why. First of all is, I mean, they are separate  
17 firms operating under a contract. So his theory seems to be  
18 they'll maximize joint profits as though they are merged, but  
19 they're not. They're separate firms of the contract. I  
20 guess my point, too, is they chose that contract on purpose.  
21 So Professor Miller talked a lot about what you would do as a  
22 profit maximizing firm. And I agree with the economist, we  
23 have some firms maximize profits, but what I take from that  
24 is you assume they meant to do what they did. So if they  
25 signed a contract, that creates these incentives and it's

1 pretty intricate. It took us a long time to go through.  
2 They meant to do that.

3 Point three is I think what Professor Miller is  
4 saying is inconsistent with airline markets. Right? You  
5 want to grow in airline markets because networks are how you  
6 compete. If JetBlue and American are trying to be in this  
7 production and joint venture to create a better network, they  
8 benefit when the other side grows. So they're building those  
9 incentives in on purpose. Those also help them to compete  
10 more effectively with United and Delta, which I heard both  
11 parties say is their goal.

12 And then finally, just quickly, because it matters  
13 to me, what Professor Miller is saying, it's a theoretical  
14 economics statement he's trying to make, that somehow what  
15 they'll do is not what they said they'll do. It's also not  
16 consistent with what we know about economics. There's long  
17 standing economics by Nobel Prize winners that says, in a  
18 market like this, where you're competing about capacity, if  
19 you can sign a contract that incentivizes you to grow  
20 capacity, you want to do that. That's a beneficial thing to  
21 have such a contract, if you can come up with one.

22 The parties have come up with one, and it's  
23 inconsistent with economics to say they would then ignore it.

24 **Q.** Okay. I want to turn to your demonstrative again and now  
25 to slide 17, which is actually something that Dr. Miller

1 presented. Right?

2 **A.** Yes.

3 **Q.** Okay. And so he discussed this contrast between -- this  
4 illustrative example of capacity coordination, and then  
5 unilateral capacity expansion. Just to ground us, what was  
6 he trying to show?

7 **A.** I mean, this is an illustrative. These are not based on  
8 real numbers, but his argument basically was -- his  
9 assumption in doing this picture, which I think he went  
10 through pretty quickly, was that if American grows, that will  
11 be bad for JetBlue. If JetBlue grows that will be bad for  
12 American. So you have the bars where red gets bigger, blue  
13 gets smaller, and vice versa. So he said if they both grow,  
14 that will be bad for both of them. So he asserted, based on  
15 this, that they can't have meant what they did under the  
16 MGIA, because it would be bad for them.

17 **Q.** And then capacity coordination and joint profit  
18 maximization creates a longer bar up on top?

19 **A.** Right, so he would say if they would get together and do  
20 it jointly -- basically, if they're smaller, if they don't  
21 grow and if they're smaller, they make more money under this  
22 view, because he's saying each of their growth is bad for the  
23 other one.

24 **Q.** Okay. So what do you think about that?

25 **A.** I mean, again, it's inconsistent with airline economics.

1 It's inconsistent with a production joint venture. I made a  
2 slide to indicate how I think it should go and it helps to  
3 explain the MGIA and it's consistent with the airline  
4 economics. If your network partners with each other, then  
5 when American adds additional routes, segments, capacity,  
6 JetBlue can sell that capacity. That's good for the network,  
7 that grows -- American grows. JetBlue's profits go up  
8 because JetBlue wants to sell that network. Vice versa is  
9 also true.

10 It's also true, as I said, that when either of them  
11 grows on any route they serve, that puts more competition  
12 against United and Delta, that helps them stand up to United  
13 and Delta. That's good for them. All right. So once you  
14 recognize that they have complimentary assets that they have  
15 brought together in a network, then what complimentary assets  
16 mean is, if you grow, that's good for the network. It's good  
17 against the competition. If we both grow, we do better.  
18 Again, these are just illustrative, but this illustration  
19 explains why they would consciously enter the MGIA, because  
20 they want this network growth. That's what they're trying to  
21 unlock.

22 **Q.** Thank you. Going on to the second point you mentioned,  
23 is it possible in the airline industry to make meaningful  
24 price predictions by focusing -- by assuming that capacity is  
25 held fixed?

1     **A.** No. I mean, I think this has been covered in testimony,  
2     so -- and I don't need to -- the most important factor --  
3     it's not the only factor, but the most important factor in  
4     determining pricing on a given route is the capacity that's  
5     available. And so you cannot hold -- I mean, the effects of  
6     a -- you cannot make price predictions that say I'm going to  
7     extract from what's happened in capacity.

8     **Q.** So let me ask you a related question on something about  
9     Dr. Town's testimony. As you know, he claims there was a  
10    period of anticompetitive capacity discipline in the past,  
11    and that the NEA threatens to bring it back. What do the  
12    capacity expansion incentives of the NEA indicate about that  
13    theory?

14    **A.** I mean, it's similar to what I say about Dr. Miller. I  
15    mean, you can't -- both these guys I think are trying to  
16    analyze the claimed price arms that are independent of the  
17    fact that the NEA creates capacity expansion incentive. So,  
18    you know, it's the opposite of Dr. Town's theory. He said  
19    maybe the NEA will bring back what he called capacity  
20    discipline. The NEA is a growth initiative. It builds in  
21    intentional growth inducing pieces into the contract. It's  
22    creating growth in the Northeast. Those things go in the  
23    opposite of the direction of what Dr. Town is saying.

24    **Q.** Okay. So let's turn to the evidence about the output  
25    effects of the NEA and competitive effects generally. So as

1 a preliminary question, is there a simple summary metric that  
2 one can use to get a view on whether the NEA is likely to be  
3 procompetitive or anticompetitive?

4 **A.** I think I will sound like a broken record, but --

5 **Q.** I'm pretty sure I know what you're going to say, but say  
6 it anyway.

7 **A.** It's the capacity effects and then especially we have  
8 markets that are at issue in this case, in New York and  
9 Boston, coming out of them. If I was going to look at one  
10 metric, I would look at capacity. That's the supply curve,  
11 right? The way I think about what we study in antitrust  
12 cases as economists is does the supply curve shift in because  
13 something bad happened, or out because something good  
14 happened? And so if I -- it's not the only thing that anyone  
15 can look at, but if I was going to look at one summary  
16 measure relative to this case, it would be what's happened in  
17 capacity on the routes at issue in this case.

18 **Q.** In looking at the capacity effects, would you focus on  
19 particular routes, NEA routes together, system wide routes?  
20 What's the scope of the analysis?

21 **A.** Well, I would certainly focus, first and foremost, on the  
22 NEA routes, because that's what I understand to be at issue  
23 in this case. So in some sense, that's a legal decision, I  
24 guess, but I understand the primary question to be has there  
25 been harm on a certain set of markets.

1 I will say that I understand, as an economist,  
2 there has been sort of loose that I've heard claims that I  
3 sort of call robbing Peter to pay Paul, that the benefits to  
4 the NEA routes are coming from other places. So I've thought  
5 about that and I think we're saying a couple of things. One  
6 is it's certainly possible as an economist that somebody  
7 could actually come and show harm on some market somewhere,  
8 and you think about how do I balance that harm. I haven't  
9 seen anything that comes close to the level of showing harm  
10 in some other market. And that matters to me a lot, this  
11 issue matters to me, because growth and initiatives are good  
12 things in the airline industry. If you create the  
13 opportunity to grow in the Northeast, that's good. And if  
14 that causes you to shift some assets to a more productive  
15 use, that's good, because we're growing output.

16 And the way that usually happens in the airline  
17 industry, and I think what's happening here, is in the short  
18 run, when you have to move some planes around, you move them  
19 from places where they're not very profitable, because  
20 there's a lot of competition. So in the short run, maybe  
21 people are moving planes around. I think about that as  
22 cutting fat off the network. That's a good thing to me,  
23 because that means assets are being used more productively.  
24 In the airline industry, the way I think about it, if you  
25 ever get to the point where you have to cut muscle, where

1 you're cutting things that really matter elsewhere in the  
2 network, what are you going to do? You're going to go buy  
3 more planes because that muscle matters to your network. So  
4 there's a short run shifting of assets, that's a good thing.  
5 If the longer run of that leads to the need to go buy more  
6 planes, as JetBlue has already said it's doing, that's a good  
7 thing, too.

8 **Q.** We've heard a lot in this case about the growth  
9 constraints in the NEA airports, particularly in New York.  
10 How does that affect your focus on capacity growth as a key  
11 metric?

12 **A.** This is why I spent a lot of time last week talking about  
13 these markets. They are markets where assets are tight,  
14 assets are scarce. There are scarce slots in New York.  
15 Boston is a little less tight, frankly, but it's got not a  
16 lot of space at Logan. There's scarce gates. So in any  
17 airlines or anything else, as an economist, if I see scarce  
18 assets, then the number one thing to me is how do you use  
19 those assets effectively. And so it makes it just even more  
20 important to say the metric here should be is this  
21 transaction that's building a more productive network that's  
22 using those assets more effectively.

23 **Q.** Okay. I want to turn to a number of data points that  
24 you've created for us on the growth and capacity and traffic  
25 from the NEA. And to begin that, we'll pull up Defendants'



1 Exhibit 932. If you could describe what you have created  
2 here and where you get the data to create it.

3 **A.** Yes. So these are -- as it says at the top, these are  
4 measures of ASMs. They are ASM growth. They are ASM growth  
5 at the NEA airports. Those ASMs are taken from OAG, the  
6 Official Airline Guide that we've talked about that gives you  
7 schedules, so you can see how many seats are being flown on  
8 every route.

9 And so what I have done here is I have started with  
10 September 2020, which is prior to the NEA being launched as  
11 the base, as zero, and measured growth relative for that.  
12 And I've measured for American and JetBlue relative to all  
13 other carriers. So just American and JetBlue relative to the  
14 industry on all routes from the NEA airports.

15 **Q.** And what is the significance of the fact that the blue  
16 line for the NEA partners is above the red line for all other  
17 carriers?

18 **A.** It just means American and JetBlue are growing a lot  
19 more.

20 And quickly, let me say, if you look at the line  
21 from September to January. That's, you know, a bad time  
22 during COVID and so on, but we see those lines staying  
23 together. They're parallel trends in the language of  
24 economics. They're tracking each other until January.  
25 February is the initial launch of the NEA which takes off

1 after that into March and beyond. Right coincident with that  
2 date, you see these lines diverge, and you see the growth at  
3 American and JetBlue substantially outpace the growth at the  
4 NEA airports from all other carriers.

5 **Q.** Okay. Let's turn next to Defendants Exhibit 930, which  
6 is another graphic based upon a chart in your report. What  
7 is this and what is its significance?

8 **A.** So this is the same picture, but for nonNEA airports.

9 **Q.** And why did you want to do this?

10 **A.** I mean, two things. One is -- and my starting point was  
11 to say if the picture looks different for nonNEA airports, if  
12 it's -- if the growth is not happening, the divergence is not  
13 happening as much at nonNEA airports, then it seems to be an  
14 NEA effect. So that's one point. It's just the lines are a  
15 lot closer together.

16 Point two is we talked a minute ago about sort of  
17 robbing Peter to pay Paul theories, so you can look at this  
18 and say is it true that American and JetBlue are way behind  
19 the other carriers at the nonNEA airports? And the answer is  
20 no. If anything, they were a little bit ahead, it bounces  
21 back and forth between the two, but these lines are very  
22 similar. So it tells me, (a), the NEA effect is a real NEA  
23 effect, but (b), it's not resulting in American -- just a  
24 reversal at the other airports.

25 **Q.** Okay. Let's pull up DX-935 next, and drafted based upon

1 something in your report entitled "American and JetBlue ASM  
2 share increased at NEA airports post-NEA." How did you  
3 create this one and what does it mean?

4 **A.** It's similar data, it's just looking at it slightly  
5 differently. It's NEA airports, again.

6 The first three bars are American and JetBlue's  
7 share of ASMs at those airports leading into coming into  
8 COVID and the NEA. So they were slightly declining over  
9 time, falling behind as we have seen from other metrics. The  
10 picture then skips 2020, the pandemic year, but compares to  
11 2021. And you'll see in 2021, with the introduction of the  
12 NEA, American and JetBlue have a much higher share. Share as  
13 a typical way, as an economist, I would look at this, if it  
14 sort of uses the other carriers as a benchmark again, and  
15 says if we gain share, or the parties have gained share, then  
16 the parties are doing better. They've grown their capacity  
17 relative to the industry.

18 **Q.** Have you heard DOJ and its experts say that none of those  
19 changes are meaningful because of COVID?

20 **A.** I have heard that argument. And you know, I've heard  
21 arguments about 2021, you know, and I agree, it still had  
22 some COVID effects. I mean, to me, because I'm benchmarking  
23 everything against the other carriers, I still think it's  
24 informative. But I've also heard Mr. Kirby, for example, and  
25 others say 2022 versus 2019 is what the industry does, so

1 I've gone on and looked at that.

2 **Q.** Have you seen any data that indicate that the NEA  
3 carriers haven't gained at least some share against their  
4 Northeast arrivals?

5 **A.** No. Nothing at all, anywhere. I mean, they've grown by  
6 every metric that I have. I think we have a slide that was  
7 based on something Dr. Town did for 2022.

8 **Q.** Right. I was going to ask you that Dr. Town makes an  
9 argument that there's actually a decline in the market share  
10 between 2020 and 2021. How do you respond to that?

11 **A.** Yeah. I mean, 2020 is a pandemic year. I would agree  
12 that 2020 is a little bit crazy. I mean, it actually grows  
13 from '20 to '21, as you can see here in this picture. But I  
14 don't think that we should base the analysis strictly on  
15 2020. And ultimately, I think you should look at where they  
16 stand relative to where they were before. So I think  
17 Dr. Town also made a point of that they had to decline from  
18 2021 to 2022. And I acknowledge and agree that the share  
19 peaked in 2021, but what matters here is that in 2022, their  
20 combined share is at 24 percent of ASMs roughly. They had  
21 been 18 and falling beforehand.

22 So I think -- as I said, I think we've heard  
23 Mr. Kirby say and I've seen it all over the industry, what  
24 most people are doing is just snapshotting and comparing '22  
25 to '19, and '22 to '19 is a big jump for the NEA. So I would

1 acknowledge that's a reasonable comparison and that makes the  
2 same point.

3 **Q.** There has been testimony in the case about less growth in  
4 Boston and even capacity reductions in the last year or so.  
5 Have you factored that into your analysis?

6 **A.** Yeah, I have definitely thought a lot about it. There's  
7 also been testimony from JetBlue itself about operational  
8 difficulties, particularly in Q3 of '22. So those -- you  
9 know, as we come into the second half of '22, JetBlue talked  
10 about pilot issues that it's had and various operational  
11 issues, that's affecting JetBlue's overall ASMs in the second  
12 half of '22. And I think Mr. Hayes -- I think it was, said  
13 it most clearly, JetBlue has a lot of operations in New York  
14 and Boston. In New York it has slot issues. That means it  
15 can't really pull down in capacity. So its ability to deal  
16 with operational issues is pretty heavily focused on Boston.  
17 So you're going to see in the second half of 2022, some --  
18 you know, JetBlue dealing with that in Boston. and -- but  
19 Sorry, it doesn't affect anything about the NEA, it just says  
20 there's operational issues that JetBlue is dealing with on  
21 its own.

22 **Q.** All right. Thank you, Dr. Israel. I want to bring up  
23 the demonstrative again at this time to slide 19,  
24 entitled, "NEA ASM growth." What does this table show  
25 regarding its underlying data?

1     **A.** Same underlying data. It's just sort of a different  
2     version on what we've been talking about. If you compare --  
3     what the AS -- so the first column of numbers is just ASMs in  
4     levels. So it's just American and JetBlue versus other  
5     carriers at NEA airports and the same thing at nonNEA  
6     airports. Those are just to ground you in the numbers.

7     **Q.** So the negative numbers on the nonNEA airplanes, that's  
8     indicating that people haven't reached the preCOVID level?

9     **A.** Correct. So I was going to say the third column is the  
10    one what really matters here is the growth and what it should  
11    tell us is the only place we have seen growth coming out of  
12    COVID is American and JetBlue at the NEA airports. The other  
13    carriers are well below their 2019 levels. The nonNEA  
14    airports, everyone is below their nonNEA -- their preCOVID  
15    levels. Here, American and JetBlue are slightly ahead. But  
16    the point I would make is the routes at issue in this case,  
17    the NEA airports served by American and JetBlue, that is the  
18    one place in the industry where we've seen growth.

19    **Q.** Growth in absolute terms relative to 2019?

20    **A.** Correct.

21    **Q.** Okay. All right. So what do you conclude from this data  
22    about increased output?

23    **A.** Everything I've seen in this case, every data I've looked  
24    at says that at -- in the NEA airports, in the routes that  
25    we're focused on here, American and JetBlue have grown

1 capacity. They've grown relative to the industry, they've  
2 grown relative to other carriers. In these routes, the  
3 effect to date has been capacity growth. And as said before,  
4 that metric tells me the supply curve has shifted out in a  
5 good way.

6 **Q.** Now, Dr. Town in his testimony, but also in his reply  
7 report, which he hasn't presented yet, but unfortunately you  
8 don't get to come back afterwards, he spends a lot of time  
9 arguing that you haven't shown that the NEA is the cause of  
10 the observed growth. What is your response?

11 **A.** I mean, I haven't heard an argument about what else the  
12 cause for all of these data would be, and what -- I've tried  
13 to look at it every way that I can think of. I've looked at  
14 the NEA carriers versus other carriers, I've looked at the  
15 NEA years versus other years. I've looked at the NEA  
16 airports versus other airports. It's all pointing to the  
17 NEA, so it seems to be an NEA effect by every metric I can  
18 think of.

19 **Q.** Okay. Now, you've also looked at the growth that was  
20 predicted in planning for the NEA through the clean team  
21 process, right?

22 **A.** Yes.

23 **Q.** Can you explain how you did that?

24 **A.** Sure. So I know there's been a lot of discussions, so  
25 I'll sort of describe how I came to the process and what I

1 did.

2 So the clean team, we've heard a lot about it, and  
3 I won't go through everything the clean team is. By the time  
4 I got involved in the process, the clean team had run what's  
5 been called -- well, they basically had done all of their  
6 business case runs. They had prepared materials for the  
7 board, I think, or were in the process of it. They had run  
8 what was called v2, which was their plan, their case for the  
9 NEA.

10 What happened was I came and I wanted to look at  
11 those plans to see what they said. I do that in every  
12 airline transaction that I'm involved in, if I can. So I  
13 asked questions about it, what did you do, what are the  
14 plans. And I think it's worth saying from the beginning what  
15 was explained to me and how I took it and used it. What was  
16 explained to me consistently was the idea was compare NEA to  
17 nonNEA in a world that has come out of COVID. Right? That  
18 was the idea. Reflect on that that the NEA world will grow.  
19 I mean, if it does, but look at a world that comes out of  
20 COVID.

21 And then the other thing that was explained to me  
22 as I asked questions was the idea was how do you figure out  
23 what the nonNEA world will look like as we come out of COVID.  
24 That's the question, and that's the counterfactual question  
25 we've heard. That's the first question that I asked.



1           And the answer that was given to me across the  
2 board was the best prediction -- in fact, a uniquely good  
3 prediction that we have in this case is that the airlines  
4 already went through 2019 as stand-alones, they competed in  
5 an outcome in a world that didn't have COVID. We're trying  
6 to get back to 2019. The world has been on pause  
7 effectively. So what they told me is, you know, some --  
8 there will be some different planes, some will come in, some  
9 will come out, some things will change, but the best  
10 prediction we're every going to have of what stand-alones  
11 will do, absent the NEA -- absent COVID is what they did  
12 absent COVID in 2019.

13           So what they told me is the idea is take that as  
14 the baseline, sort of -- we've already seen that movie, and  
15 then plan an NEA against that same set of industry  
16 conditions, reflecting the planes that will be available when  
17 we've come out of COVID and some growth, but build an NEA  
18 that will be compared to what actually happened on a  
19 stand-alone basis in a world that was, you know, at the --  
20 just without the COVID level.

21 **Q.** And did you have an occasion then to prepare what's  
22 called a consumer benefits study for submission to the  
23 Department of Justice and the Department of Transportation?

24 **A.** Yes.

25 **Q.** And was that based upon the v2 optimized schedule?

1     **A.** Yeah. It took what they had done in v2, what they had  
2     presented -- what they told me and with all my questions  
3     understood, was their analysis of with and without NEA, and I  
4     looked at the predictions from that and used that to figure  
5     out the associated benefit.

6     **Q.** And in connection with that, was that then run through  
7     this Raven forecasting tool that we've heard about?

8     **A.** That's correct. So this was all, again, before I was  
9     involved. They do these two plans, with and without NEA.  
10    You feed them into Raven. Raven's a complicated model, but  
11    it's job is to spit out passenger predictions. Those  
12    passenger predictions become the basis of my calculation.

13           THE COURT: So does that mean in v2 there's two  
14    flavors, v2 output, where the schedules are separate, just  
15    the way they ran, and then v2, where you combine them in  
16    2019?

17           THE WITNESS: Correct. So v2 is actually literally  
18    the NEA world.

19           THE COURT: I see.

20           THE WITNESS: So v2 is take -- everything is given  
21    from 2019, the demand conditions that the model knows,  
22    everybody else's schedule, but then the clean team got  
23    together and planned the NEA. That's v2.

24    BY MR. WALL:

25    **Q.** Just to be clear, v2, it is a schedule of flights and

1 frequencies?

2 **A.** Right.

3 THE COURT: Schedules of flights and frequencies  
4 that the clean team came up with in an effort to optimize the  
5 two together and then apply to 2019 circumstances.

6 THE WITNESS: Correct. Absolutely. And then  
7 they -- I mean, they used those demand conditions, their  
8 planning was running things through Raven based on those 2019  
9 conditions. And that was compared to an actual schedule from  
10 September of 2019. That actually was flown.

11 THE COURT: And so is v2 based on the fleets that  
12 existed in 2019? Or based on what was thought to be in the  
13 future?

14 THE WITNESS: v2 included order book, right,  
15 because -- and the way that I think about this and this is  
16 important to discuss, the -- and this is why I went through  
17 that sort of long monologue before. The way it was always  
18 explained to me is we want to understand the world when we  
19 just come out of COVID.

20 THE COURT: All right.

21 MR. SCHWED: So they -- and I asked this question  
22 repeatedly. They said we're using the stand-alones in  
23 September of 2019, because that's the world without COVID.  
24 That's what we did. What we're going to do for the NEA is  
25 look at what the NEA can do when we come out of COVID, and

1 that's going to include the planes that will be available.

2 THE COURT: So that shifts in the sense that the  
3 order book might order one or might order 50 or however many  
4 planes your order book had to be rolled out by 2022, minus,  
5 presumably, there's a certain amount of whatever that might  
6 have to age out or --

7 THE WITNESS: Right. And they looked at what was  
8 available based on what they had, including what they could  
9 delay retirements on. They looked at what was available.  
10 But for the stand-alones, what they said is, you know, we're  
11 using 2019. When we actually get to 2022, some things will  
12 have been retired, some things will have been added. There  
13 will be some changes on planes around the edges, but what we  
14 actually did against those demand conditions is the best  
15 guess we're going to have on what we would do if we faced  
16 those same demand conditions again.

17 BY MR. WALL:

18 **Q.** So just to follow-up on that, in an exercise that you're  
19 doing on the consumer benefits, if you're doing that on the  
20 airline industry, and you assume that the fleet is  
21 constrained, how is that going to affect the outcome?

22 **A.** Yeah, if you -- if you assume you have the same fleet,  
23 stand-alone, versus NEA, you're going to get very small  
24 passenger increases, if any. You can squeeze a bit more out  
25 of the network, but with the modern planning tools, what

1 they're going to find is if you have the same fleet -- if you  
2 increase demand for your network, which is what they're  
3 trying to do, the model actually goes through -- it doesn't  
4 just model the demand, it models the process of can people  
5 find a seat. So it models what's called spill. So you're  
6 going to see if we increase demand, it's just going to spill  
7 people out the other end. So it was clear from the get-go  
8 and through the planning that the NEA involves capacity  
9 growth. That's what it's built for. If you don't have that  
10 capacity growth, you can generate the demand, but you're just  
11 going to spill people off full plans and you're going to see  
12 very little, if any, uptick.

13 **Q.** Is there precedent in antitrust economics for using the  
14 plans that the businesses actually relied on?

15 **A.** That's what I try to do. I mean, so in this case, it did  
16 come in where they had already done these plans. But I think  
17 the ideal is to use plans they've run, plans they have  
18 presented to the board. There have been earlier airline  
19 transactions that were mentioned in here where there weren't  
20 such planes, it was therefore harder to run the schedule.  
21 But my practice and I think the DOJ's practice in its merger  
22 guidelines is to try to use existing planes, if you can.

23 THE COURT: So one further just question on this.  
24 So is the order -- the purpose of the NEA, you understand it  
25 is, in parts, to increase demand, right?

1 THE WITNESS: Yes.

2 THE COURT: And so is the order book that existed  
3 preNEA, or the order book that is revised in light of the  
4 anticipated demand from the NEA?

5 THE WITNESS: They just used the order book, as I  
6 understand it, that existed.

7 So I think I heard Mr. Fintzen, I think it was,  
8 testify and it was exactly what he had said to me, was we  
9 used the order book that existed to try to ground things in  
10 the reality, so we didn't -- you don't want to come in with  
11 your -- to go to the board and say we're assuming you're  
12 going to give us 100 more planes as a result of the NEA. You  
13 know, maybe you will and that's part of the growth that I  
14 think they said they'd bought 30 more planes as a result.  
15 But the way it was explained to me is we know there's going  
16 to be capacity growth. We want a reasonable way to model  
17 what that might be, so we're going to see what we can take  
18 out of the existing order book.

19 THE COURT: Why doesn't -- so what you were saying  
20 before is if you constrained the fleet, and you do something  
21 to increase demand, you're going to get spill. You're not  
22 really going to get much of a difference. The difference  
23 that you'd mostly get is you full up the capacity that's  
24 excess that you had.

25 THE WITNESS: So what's the difference you're

1 asking me?

2 THE COURT: Well, then -- but then, yeah. But  
3 then, isn't the fleet constrained in a different way?

4 THE WITNESS: Yeah. I mean, they were using what  
5 the stand-alones did in 2019, which was smaller than that.  
6 Right? So what was going to happen in the meantime was some  
7 planes were going to be retired, some were going to be added,  
8 the stand-alone was going to fly with a smaller fleet,  
9 because it wasn't going to -- it was going to let the planes  
10 retire. It wasn't going to use all of the planes that the  
11 NEA was using. So just to be clear, it's the existing order  
12 book that they're using in the NEA. They're not adding  
13 additional orders. But they are modeling full, more complete  
14 utilization of that capacity as the thing that the NEA  
15 unlocks.

16 **Q.** Let me just follow up on a detail. Were they also  
17 modeling that they would delay retirements of some aircraft?

18 **A.** The NEA -- they were given the option, so what would  
19 happen in the real world relative to 2019 would be some  
20 things would be retired. People have testified to that.  
21 Some would be added. American tried to keep block hours  
22 roughly the same, but things would come on and off. They  
23 acknowledged that and I asked this question repeatedly. They  
24 just said things come on and off, we don't have any model  
25 today of 2023, right? Because we're in the middle of COVID.

1 The best we can give you is we're going to let things come on  
2 and off optimally, and optimally for the stand-alones is  
3 going to look a lot like 2019, because we already played that  
4 game. Whereas, the NEA has the same existing planes, the  
5 same order book, it's going to make different choices because  
6 the model is telling us and their analysis is telling us it's  
7 got more demand opportunities to --

8 THE COURT: But wouldn't you want to know, in the  
9 coming on and off -- the coming on and off is probably not  
10 every single year. Over time, there are some years where  
11 more comes on and more comes off. So if a lot was coming on,  
12 hypothetically, between 2019 and 2022, that would be  
13 significant in the analysis. If nothing much were coming on  
14 or off, that would also be significant.

15 THE WITNESS: Right. And the way that I think  
16 about that, and the way I think they were thinking about  
17 that, is those decisions are decisions that we have to make  
18 every day. What do we retire? Mr. Raja talked about do we  
19 delay our order book because of the COVID.

20 I asked these questions repeatedly, the  
21 conversations that we've heard about, and the answer was:  
22 Sitting here in 2020, 2021, we can't tell you every decision  
23 we're going to make. We're going to retire some stuff.  
24 We're going to add some stuff. Those are decisions that we  
25 make every day. And the best I can tell you today is that if



1 we're really facing 2019-like demand conditions, we're going  
2 to make similar fleet decisions to what we made then.

3 In fact, it's a better predictor than I have in  
4 most cases, because we've seen what decisions they make then.  
5 So they were telling me -- and it makes sense to me. The  
6 best I think I can tell you about the world post-COVID and  
7 what planes we'll choose and what planes we'll park and what  
8 planes we won't fly, is faced with those demand conditions, a  
9 similar-sized fleet will be the optimal thing that we can do.

10 And I think they would acknowledge, it's not a  
11 perfect estimate. You're trying to estimate the best you  
12 can. But given that there's retirements happening and things  
13 coming on, and we've seen the decisions that we make in a  
14 world that's just outside of COVID, we have a model of the  
15 world outside COVID, which is the best thing that we have  
16 available. That's the logic.

17 BY MR. WALL:

18 **Q.** So if I can, this may, at the risk of asking kind of a  
19 circular question, is there any -- was there any part of  
20 the -- let me strike that and start over.

21 Did the v2 optimized schedule assume, implicitly or  
22 explicitly, that the parties would have the aircraft required  
23 to fly it?

24 **A.** Yes.

25 MR. DOIDGE: Objection. Leading.

1 THE COURT: Overruled.

2 THE WITNESS: Yes. I mean, the v2 schedule put  
3 together a schedule where they looked to see what aircraft --  
4 you know, they would have the aircraft. That's where the  
5 order book come in.

6 And Mr. Fintzen said it to me and said it in here.  
7 What he told me, and frankly, was, "We think we're going to  
8 do a lot more than that." That's in the JetBlue documents.  
9 We think we're going to go buy more planes, more than what  
10 the order book currently says. But we want to try to figure  
11 out what's available to us now.

12 THE COURT: How did it do what Mr. Wall asked you?

13 THE WITNESS: Because they only let themselves fly  
14 planes that were currently --

15 THE COURT: No. He asked you to assume that they  
16 had the planes to fly --

17 How did you put it?

18 MR. WALL: To support the flying that was  
19 scheduled.

20 THE COURT: To support the flying that was  
21 scheduled.

22 THE WITNESS: That, in practice, they put down the  
23 schedule, and the schedule is fed into Raven and they said,  
24 "We have the equipment."

25 THE COURT: That's because they can't fly a

1 schedule that they don't have planes for.

2 THE WITNESS: Right. That's all that means.

3 The question is how do we -- and I want to be very  
4 clear with you about this, there's no doubt that the logic  
5 from the beginning was -- it's the whole logic of the NEA.  
6 There's going to be more planes flown in the NEA schedule  
7 than stand-alone. That is in the logic of what they're  
8 doing. That's what they're modeling. No question about it.  
9 The way they were doing that was to say, "We have a 2019  
10 world. We have a 2022 world, with 2023 --

11 THE COURT: I mean the question that I'm wondering  
12 about, though -- I understand that comparison, but the 2019  
13 world they lived in in 2019 had an order book. And an order  
14 book presumes that you're going to buy planes, which means  
15 that they're presuming that there's going to be some -- at  
16 least some addition of capacity, because they're buying  
17 planes. And then whether it's netting out to positive or  
18 negative, I don't think I know right now. But that's what  
19 I'm trying to figure out.

20 THE WITNESS: Yeah. And I think the answer is I  
21 don't think nobody knew exactly in 2021. I think there were  
22 certainly things on the positive and things on the negative.  
23 They can also accelerate the order book or slow their  
24 retirements. You're right, there's not a prediction about  
25 the positive or the negative.

1 But there's no 2023 schedule. They don't have one.  
2 They can't make one during COVID. And they're saying, "If  
3 you're asking me to give you the best prediction that I can  
4 of what decision -- how it's to net out, it's going to be we  
5 know what happened in 2019 under those demand conditions, so  
6 we think it's going to net out roughly to zero because that's  
7 what we did under those demand conditions last time.

8 We have to make modeling -- since we're having  
9 this -- every time you do one of these cases, you struggle  
10 with this. What's the counterfactual? Which way should we  
11 go? And what I believe here, and what I think they believe,  
12 is that we actually have a better counterfactual than we  
13 usually would have, because the world got put on pause for a  
14 few years. And so at least we've seen a 2019 stand-alone.  
15 At least that gives us the world as a model.

16 BY MR. WALL:

17 **Q.** Okay. I want to move forward and actually talk about the  
18 growth that was predicted, the growth that has occurred, and  
19 how you modeled consumer benefits from that.

20 So in general, can you describe for the Court how  
21 an economist tries to quantify the consumer benefits from a  
22 transaction like this one?

23 **A.** Sure. So once we have a number of -- a number of seats  
24 or passengers that have been added, either from the planning  
25 process or from what we've seen in the real world, benefits

1 really are just me doing fancy arithmetic. It's just me  
2 saying how much consumer benefit does that number of  
3 passengers imply.

4 And the logic that goes back 50 years and has been  
5 used by the DOJ and many others is that if I see more  
6 passengers, some of them are flying because it's a better  
7 service, some of them are flying because there's more seats,  
8 some of them are flying because prices are lower. What I can  
9 do is I can ask the question, how much would price have to  
10 have come down by itself, if that was the only thing that  
11 changed, to generate that much more traffic? And that price  
12 reduction that would have generated the whole thing, that  
13 gives me a measure of consumer benefits.

14 It's sort of an intuitive thing to say, it's sort  
15 of what what's the price equivalent of that growth in  
16 passengers. But the economics work from going back to the  
17 '70s proves that that works formally, that you get a measure  
18 of the consumer welfare gains by mapping the passenger  
19 increase into the price reduction that by itself would have  
20 generated that.

21 **Q.** Okay. We have a bunch of slides that explain how this  
22 works, I want to start off with slide 2022 and the  
23 demonstrative. And this is showing, "Total seat growth  
24 predicted by the clean team of 8.7 million seats."

25 So how did that figure come about?

1     **A.** So this is what we were just having the discussion about.  
2     This is the 2019 seats versus the clean team seats. So as I  
3     said, I want to be clear, the clean team schedule has more  
4     seats. It has more capacity. That 8.7 million seats. If  
5     you do the math, just to ground you, 8.7 million seats is  
6     something like 25 planes. So it's in the range of the sort  
7     of planes that we've been hearing about that say JetBlue  
8     actually went out and bought due to the NEA. But that can  
9     ground you.

10    **Q.** Okay. Now, we know because of load factors that seats  
11    are not going to result in an equivalent number of  
12    passengers. How do you figure out the incremental number of  
13    passengers?

14    **A.** So this is the work that Raven does. These are just  
15    summarizing the number of seats. Right? Raven does -- you  
16    feed these schedules into Raven and Raven gives you the  
17    number of passengers that would be predicted that would  
18    actually fly, and so I think I have a --

19    **Q.** Yeah, go to slide 23, please?

20    **A.** Exhibit. Which is -- so Raven said of those 8.7 million  
21    seats, we're going to fly about 5.75 million more passengers.  
22    So that's a load factor in 65 percent range, that's not  
23    aggressive. If you have those extra seats, you have the  
24    better network. Raven says this is going to be the passenger  
25    increase.

1     **Q.** So what then do you do with that estimate of an  
2 additional 5.75 million passengers?

3     **A.** Yeah. I just need to find a way to figure out how much  
4 would prices have had to come down to generate that many more  
5 passengers.

6     **Q.** And an equation has popped up with the "Price elasticity  
7 formula." Can you explain this?

8     **A.** Yea. So the basically, I'll say it, it's 3 percent more  
9 passengers. Price elasticity is defined as the percentage  
10 change in quantity divided by the percentage change in price.  
11 You've heard that from Dr. Miller. You just do a little  
12 algebra on that, that tells you that you can get the implied  
13 percentage change in price that would induce a 3 percent  
14 increase in passengers by dividing the percentage change in  
15 quantity by the price elasticity.

16     **Q.** And so where are you going to find the price elasticity?

17     **A.** There's economic literature on the price elasticity in  
18 airlines that tells you the estimate that I use from the most  
19 current estimate I have from the literature, it says that  
20 elasticity is 2.1.

21     **Q.** Okay. Go to the next slide. So now we've added that  
22 into -- that value into the equation. And what does that do  
23 for us?

24     **A.** So, again, this is doing it at the aggregate level, the  
25 benefits model goes through and does this route by route, but

1 to give you -- this gives you all of the idea and basically  
2 the exact right number. 3 percent increase in quantity,  
3 divided by the price elasticity of 2.1, says you would need  
4 about a 1.5 percent price reduction. So 1.5 percent price  
5 reduction, roughly double it with the price elasticity of two  
6 gives you that 3 percent quantity increase. So it's a 1.5  
7 percent -- so the benefit that this says is it is like a  
8 1.5 percent price reduction.

9 **Q.** And once you have that 1.5 percent price decrease to  
10 stimulate the demand, what do you do with it?

11 **A.** Now it's literally just arithmetic, it's a 1.5 percent  
12 price reduction that stimulates the demand, average fare in  
13 the data -- and again, this is all done route by route in  
14 practice, but average fare in the data.

15 **Q.** Not in this, but in the demonstrative you're doing it on  
16 the aggregate. Right?

17 **A.** Yeah. This is just an aggregate to give you the -- and  
18 it gets you very much the right number. But on average, in  
19 aggregate, it's a \$229 fare. So that's the 1.5 percent, it's  
20 like a -- it's a \$3.40 price decrease. I'm then just going  
21 to take that \$3.40 and apply it to the 184 million people who  
22 were flying, and it's \$625 million. It's just basically like  
23 air fares went down by a little over three bucks, on average,  
24 \$625 million in benefits.

25 **Q.** Okay. Let's pull up, at this point, table 9 from your



1 report. You mentioned that the illustration was using  
2 aggregate numbers. This was what you came up with using the  
3 route by route analysis?

4 **A.** Yeah. If you go through and do the same thing, route by  
5 route, literally looking at the conditions on each route, the  
6 growth that predicted, the fares, the elasticity, which is  
7 the 2.1, you get 635 million, so you do a lot of work, but  
8 the aggregate number tells you everything that was going on.  
9 There's nothing magic about it, it's just a price  
10 reduction to generate that many more passengers, multiplied  
11 by the number of passengers.

12 THE COURT: Is the price elasticity different on  
13 different routes?

14 THE WITNESS: It could be and so you can do -- you  
15 can get in and divide it up by the different routes. In  
16 general, what happens if you do that is you actually --  
17 usually you get bigger benefits, because you have certain  
18 routes with sort of the most business travelers and things  
19 tend to have the lowest price elasticity. They get a lot --  
20 they fly a lot more from things like the NEA, so it tends to  
21 bulk up the benefits on those routes, but here I've used the  
22 2.1 everywhere to keep it simple.

23 BY MR. WALL:

24 **Q.** Okay. So now that number, the \$634 million number,  
25 that's an annual benefits number, right?

1     **A.** Correct. Everything that's coming out of this would be  
2 analyzed.

3     **Q.** So this is based on the Raven predictions, based on the  
4 v2 optimized schedule, are there ways in which the real world  
5 was different than what was predicted?

6     **A.** Yeah. The purpose of doing a clean team and the planning  
7 and feeding it through Raven is to do this comparison. You  
8 know, to me, apples to apples, everything was 2019, they're  
9 best guess with and without the NEA. Y+ou know, in the  
10 actual world, stuff happens in the meantime and things  
11 change, and competitors react.

12             A couple things to fly here -- and I don't know if  
13 this has been said to you before, Raven, the clean team work  
14 did not include the international expansions, like to  
15 Tel Aviv and Athens, because the parties didn't know for sure  
16 where they would go internationally.

17     **Q.** You mean the work that was done back in spring of 2020?

18     **A.** Correct. It did not include the international routes.  
19 So the Raven benefits are pretty heavily -- it has some  
20 international benefits due to increased frequencies, and so  
21 on, but it didn't have the new international routes. So the  
22 Raven benefits are more skewed towards domestic.

23             What's happened in reality is a lot of  
24 international expansion, a lot of codesharing.  
25 Internationally. A lot of the benefits to date have actually

1 been on the international routes. The domestic benefits that  
2 you see here haven't fully rolled out yet. COVID has kind of  
3 held back business travel domestically, which has held these  
4 up. So in reality, you'll see more international and less of  
5 it domestic, at least thus far.

6 **Q.** Okay. Did you do more analysis of calculating benefits  
7 based upon actuals to date?

8 **A.** Yes. So as another way to do this is just to go to the  
9 data and see what's happened. So remember, Raven was based  
10 on how many more passengers would fly, based on the clean  
11 team predictions.

12 Another thing that I could do is take the same  
13 basic time periods. So compare second half of 2019, or last  
14 three quarters of 2019, to the last three quarters of 2021 as  
15 actuals before and after. And what I do is I look at that  
16 for how much did American and JetBlue share go up? So  
17 everything I showed you before, they gained share. They've  
18 actually gained share. That means they've been more  
19 attractive. They've added more passengers, more seats. So  
20 I've used those increases to do the same calculation based on  
21 actuals.

22 **Q.** Okay. I want to turn, then, to that work. So let's look  
23 at Defendants' Exhibit 920.

24 What is this and what does it show?

25 **A.** So this is what I was describing to you, but based on

1 actuals, so using the data that we've been talking about for  
2 passengers from the DOT and from seats. And as I said  
3 before, I start with shares. How much has American and  
4 JetBlue's share gone up.

5 So this is showing you, in passengers and seats,  
6 just as two different ways to look at it, how much has their  
7 share gone up. And you'll see, for both what I said to you a  
8 minute ago, there's some increase from 2.3 to 2.7 percent  
9 increase domestically, so you'll see their share has gone up  
10 from like 35 to 38. So they've attracted domestic  
11 passengers. Internationally, you see a much bigger increase,  
12 because that's where it's been rolled out more. But these  
13 were the actual 2019 versus 2021 changes in shares, based on  
14 passengers and seats.

15 **Q.** And let's look at DX921, what have you done with the data  
16 you just described in creating this table 11?

17 **A.** I just mapped the shares into the number of passengers.  
18 So for passengers, that's easy. I take the share change, and  
19 I multiply it times the number of passengers there were in  
20 2019 to convert a share into a number.

21 For seats there's one more step involved. I take  
22 the percent -- the share change in seats; I map that into the  
23 number of seats; and then I multiply the number of seats  
24 times the average load factor to turn seats into passengers.  
25 But both of these are just increases, just mapping shares

1 into passengers, based on the numbers that were flown in  
2 2019.

3 **Q.** So now that you have your passenger numbers and your seat  
4 share numbers, are you going to convert them into the  
5 consumer benefits, right?

6 **A.** Yeah. And that's the same method. We don't have to go  
7 through all the math again. It goes through --

8 **Q.** Let's just pull up Exhibit 922.

9 What's going on here?

10 **A.** So if you do the same method that I was describing for  
11 Raven, but now based on those passengers that are based on  
12 the actual share increases that have occurred, you get  
13 between 510 and 610 million. So slightly smaller, because  
14 the NEA not fully rolled out, the way I think about,  
15 especially domestically, but similar numbers to what are  
16 coming from Raven.

17 **Q.** So something one might notice is that you're getting  
18 total estimated benefits that are somewhat smaller than what  
19 you did through the Raven method, but on substantially small  
20 numbers of total additional passengers. What accounts for  
21 that?

22 **A.** The benefits have largely -- as I said, the growth has  
23 largely been on international routes so far. International  
24 routes have higher fares. So an equivalent -- a smaller  
25 number of incremental passengers, even a smaller percentage

1 price change is going to be a bigger dollar number when it's  
2 applied to international flight.

3 **Q.** Now, do you expect that these total estimated benefits  
4 numbers will hold from year to year or will vary? What do  
5 you expect?

6 **A.** Well, they'll certainly vary. They will vary as the NEA  
7 is rolled out more. They will -- I will note, they will also  
8 vary if other competitors come in, maybe as has happened in  
9 2022, with stronger service.

10 One thing that's interesting about these benefits,  
11 if other carriers come in with stronger service in response,  
12 that's going to pull the share gains down. Right? Because  
13 the other carriers have gotten better. The American and  
14 JetBlue share gain would come down. And the benefit  
15 calculation, that will make the benefits look smaller. But  
16 that's really just the way this is conservative, because that  
17 response is itself a good thing. This whole calculation is  
18 done as though only American and JetBlue have gotten better.  
19 So it's all based on share.

20 So I would expect to see it bounce around. I would  
21 expect to see it maybe come down as competitors respond. But  
22 that is all part of the competitive process that grows out of  
23 this.

24 **Q.** But if it comes down as competitors respond, the  
25 competitor response is itself potentially creating a benefit,

1 right?

2 **A.** Certainly, if it's a direct response and it's a quality  
3 improvement, or something, yes. It's just the methodology  
4 treats American and JetBlue as the only ones that have gotten  
5 better, so it misses that competitive response.

6 **Q.** Okay. Now, I've got to give you a chance to sort of  
7 anticipate and respond to the criticisms that Dr. Town has  
8 levelled against your benefits analysis in your reply report.  
9 Can you just summarize those and provide the Court with some  
10 thoughts and response?

11 **A.** Yeah, I'll try. There are -- I see them -- there's a lot  
12 of pages in his reply report. I would put them in two basic  
13 categories. One of them is sort of criticizing the whole  
14 methodology as though it's something unusual or it requires  
15 strong assumptions. You know, strong demand assumptions. To  
16 that I would say, you know, this method has been used in  
17 economics for 50 years. It's been adopted by the DOJ. The  
18 DOJ papers we've heard about use it. The follow-up DOJ  
19 papers I just -- don't ever say the monetization method  
20 doesn't work. So it's a very standard method. The economic  
21 literature has shown that it holds across a broad variety of  
22 demand conditions. So I just -- I think it's just wrong to  
23 say that it's somehow unusual to map things into price  
24 changes.

25 **Q.** He also makes a criticism about some of your modeling

1 assumptions as between linear demand and logit demand?

2 **A.** Yeah. So this one I have to apologize, I have to do  
3 something slightly technical after talking for two hours. So  
4 a lot of the pages in Dr. Town's reply report, that I imagine  
5 you'll hear about, are about saying that under -- if you use  
6 a linear demand curve, which is a demand curve that's a  
7 straight line like this, that can lead in some circumstances  
8 to quite large benefits. This is something that I know. I  
9 wrote a paper to the DOJ explaining this. And what I said in  
10 the paper to the DOJ is, when you compute benefits under the  
11 linear demand curve, you basically add up two pieces. You  
12 add up what's -- again, you add up what's called the  
13 rectangle and the triangle. Again, trying to do this in  
14 advance. But if you add in the triangle piece, that can lead  
15 to these large benefits. Right? So --

16 **Q.** Larger than you have calculated, correct?

17 **A.** Much larger than what I have calculated. They correct  
18 under linear demand, but they can get very large. I told the  
19 DOJ, therefore, I'm not counting the triangle. That's not  
20 part of what I'm doing, that's not in my estimates. I'm just  
21 using the rectangle. And I told the DOJ that the rectangle,  
22 just that part, a reason to do that is if you just use that  
23 part, you actually get a very good approximation to what the  
24 benefits would be if demand wasn't linear, but instead was  
25 logit, that you've heard about, which doesn't have any of



1     these issues.

2             So a lot of what Dr. Town does is say that linear  
3     gives you these problems and I know. I wrote a paper about  
4     that, and therefore, I just use the piece that corresponds to  
5     logit. And under -- the logit doesn't have any of these  
6     issues that he brings us up.

7     **Q.** Okay. I just have two more questions for you. First,  
8     how would you sum up your views on the competitive effects of  
9     the Northeast Alliance?

10    **A.** So I would say, I guess, I mean, on my summary that I  
11    gave at the beginning stands. I think four things. One is,  
12    I think this is a creative, innovative attempt to compete in  
13    very difficult markets, where there are strong hub carriers  
14    and there are limited assets. And it is an attempt to  
15    preserve separate business models and separate competition  
16    while making a network that can do that. So I think it's a  
17    creative innovation, above all, that I hope is given a chance  
18    to succeed.

19             Number two, I think it seems to be working. Right?  
20    I mean, we should all keep watching the data, but in the  
21    markets at issue, it is clearly creating growth. I don't  
22    think there's any question about that, and so that's what we  
23    want. That's beneficial.

24             I think three, the responses to it, to me, are  
25    speculative. They are based on economic theories that don't

1 fit the facts, based on redefining markets in ways that don't  
2 fit the reality of the markets, and they don't grapple with  
3 the growth that we've seen play out.

4 And so I guess my summary would be it's blocking  
5 this at this point would be harmful to consumers in New York  
6 and Boston, but also to -- what matters a lot to me is I  
7 think it would be bad for airline markets because it would  
8 kind of - it would kill this innovative approach before it's  
9 given a chance.

10 Q. Finally, Dr. Israel, and Your Honor, with the Court's  
11 permission, over the weekend, Dr. Robert Willig, a very  
12 important antitrust economist, and a mentor to Dr. Israel  
13 passed away, and he asked if he could just have an  
14 opportunity to put on a transcript, just a brief comment on  
15 Dr. Willig's passing?

16 MR. DOIDGE: Your Honor, as long as it doesn't  
17 relate to any substantive thing, with respect to the case, we  
18 have no objection.

19 THE COURT: All right. Go ahead.

20 THE WITNESS: Thank you. And it won't be -- so  
21 Bobby Willig, as he's known to me, was my mentor in this  
22 business, and the best economist I've ever known, and a close  
23 personal friend. And he passed away over the weekend, as  
24 Mr. Wall said. His funeral is happening now. So I just  
25 wanted the chance to say that I am sad that I can't be there,

1 that he means everything to me as an economist. He's the  
2 best economist that I've ever known and taught me everything  
3 I know in some ways about antitrust, and so I just wanted the  
4 chance to honor him in that same way. So thank you.

5 THE COURT: Thank you. Well done. And thank you,  
6 I understand the sacrifice that means as a person, to be here  
7 rather than to not go to that, and not go to that event, so I  
8 appreciate that, and I think everybody does.

9 THE WITNESS: Thank you.

10 MR. WALL: No more questions, Your Honor.

11 THE COURT: All right. Want to take the break now  
12 and then do the cross after?

13 MR. DOIDGE: That's fine.

14 THE COURT: We stand in recess.

15 (Court in recess at 11:01 a.m.

16 and reconvened at 11:16 a.m.)

17 THE COURT: Go ahead.

18 MR. DOIDGE: Good morning, Your Honor.

19 Good morning, Dr. Israel.

20 THE WITNESS: Good morning.

21 MR. DOIDGE: I'd like to express my condolences to  
22 the loss of Dr. Willig.

23 THE WITNESS: Thank you.

24 **CROSS-EXAMINATION BY COUNSEL FOR PLAINTIFF USA**

25 BY MR. DOIDGE:

1     **Q.** Dr. Israel, we've handed you some additional binders that  
2     we may be referring to, so I'll let you know if and when we  
3     need to look at that.

4     **A.** Okay.

5     **Q.** Dr. Israel, you've been retained as an economic expert  
6     for legacy airlines many times, correct?

7     **A.** That's correct.

8     **Q.** And you're currently working -- in fact, you're currently  
9     working for United Airlines in the context of a private class  
10    action; is that right?

11    **A.** That's correct. I don't know the status of the case, but  
12    as far as I know, it's ongoing.

13    **Q.** And you've also worked on prior mergers, including for US  
14    Airways in connect with the US Airways/American merger,  
15    right?

16    **A.** Yes.

17    **Q.** And you've also worked on behalf of legacy airlines in  
18    the context of regulatory matters before the Department of  
19    Transportation, correct?

20    **A.** Yes.

21    **Q.** And, for example, you've worked on behalf of US Airways,  
22    in 2011, in the matter involving US Airways giving Delta 265  
23    LaGuardia slots in exchange for DCA slots, right?

24    **A.** I don't remember the numbers, but, yes, I worked on that  
25    transaction.

1     **Q.** And on behalf of American, you've worked in the context  
2     of their seeking antitrust immunity for various international  
3     joint ventures, right?

4     **A.** Yes.

5     **Q.** And over the course of your career at come Compass  
6     Lexecon, you've billed thousands of hours to legacy airlines,  
7     correct?

8     **A.** That sounds right. I haven't -- I don't usually know my  
9     number of hours by case, but thousands is probably correct.

10    **Q.** And your current billing rate is \$1,600 an hour, right?

11    **A.** That's correct.

12    **Q.** And in that entire career, you have never been retained  
13    in an airline matter where you offered an opinion that was  
14    adverse to a domestic legacy airline, correct?

15    **A.** Yeah, I mean, my retentions have been for the legacy  
16    airlines, or the airlines generally, so I think that's  
17    correct.

18    **Q.** And Dr. Israel, let me just -- let's talk a little bit  
19    about the work that your -- about the current work that  
20    you've been doing for United. And in the context of that  
21    work, that relates to an ongoing class action. And you --  
22    fair to say that you understand that the litigation involves  
23    an allegation that legacy airlines and Southwest violated  
24    Section 1 of the Sherman Act, right?

25    **A.** Yeah, I understand that to be the allegation.

1     **Q.** And the nature of the alleged violation is that those  
2     airlines have engaged in a conspiracy to restrict airline  
3     capacity, right?

4     **A.** Yeah, again, I understand that to be the nature of the  
5     allegation by plaintiffs.

6     **Q.** And the period of the alleged coordination is roughly  
7     from 2010 to 2015; is that right?

8     **A.** I don't remember the dates.

9     **Q.** Does that sound about right, Dr. Israel?

10    **A.** I really don't remember -- it's certainly not far off, I  
11    just don't remember the exact years.

12    **Q.** Well, fair enough. Is it fair to say that it's  
13    roughly -- the period of alleged capacity coordination in  
14    that case is roughly the same time period that Professor Town  
15    has identified as the capacity discipline period in this  
16    matter?

17    **A.** I don't remember either dates exactly. So when I think  
18    it followed off of an investigation that DOJ did and didn't  
19    bring a case with similar years, that's what I remember about  
20    the United case. I'm trying to remember -- I think  
21    Dr. Town's dates were similar in the 2010 to '15 range.

22    **Q.** And with respect to the DOJ investigation, Dr. Israel,  
23    it's fair to say that you don't actually know whether or not  
24    that investigation has been closed or not, correct?

25    **A.** Yeah, I guess I just know what I said, which is that

1       there hasn't been a case brought.

2       **Q.**   Thank you.

3               And in the context of the opinion that you've  
4       offered on behalf of United in that class action, you have --  
5       you've stated that the airline industry is an oligopoly,  
6       right?

7       **A.**   Yeah, I think we talked about this in the deposition.  So  
8       I stated an oligopoly in the sense that it's not perfectly  
9       competitive, which to me just means the airlines pay  
10      attention to each other and react strategically.

11      **Q.**   And in the context, you've introduced a concept in that  
12      litigation of something along the lines of oligopolistic  
13      interaction, right?

14      **A.**   I'm not sure what you mean by introduced the concept.  I  
15      think I described that the industry could be seen that way,  
16      in the sense that I just said, which is that airlines  
17      obviously pay attention to one another's behavior  
18      strategically.

19      **Q.**   And you say that they pay attention to one another  
20      strategically, what you have in mind is that the firms are  
21      strategically aware of one another and in some form consider  
22      reactions to one another in making their strategies, right?

23      **A.**   Yeah, I think that's a fair description of how they  
24      compete.  They are aware of each other, and they consider  
25      each other's actions and they compete accordingly.

1     **Q.** And you understand that United is contending that this  
2     concept of strategic interaction among oligopolists, that  
3     that engagement, that form of behavior, rather than an  
4     express agreement, can explain the existence of capacity  
5     discipline that's been alleged in that class action, right?

6     **A.** I don't know that I know exactly what United is claiming.  
7     Again, I think we talked about this. I certainly know that  
8     my opinion has been that evidence in that case that indicates  
9     the different airlines pay attention to each other and  
10    monitor each other is consistent with that form of  
11    competition and doesn't indicate any collusion.

12    **Q.** It doesn't indicate collusion that would violate  
13    Section 1 of the Sherman Act, right?

14    **A.** That sounds like a legal conclusion. My economic  
15    conclusion has been that evidence that they monitor each  
16    other is how they compete. So to me as an economist, that  
17    doesn't suggest collusion.

18    **Q.** Well, fair to say that in the form of this -- that with  
19    respect to this concept of strategic behavior that the  
20    oligopolists may be engaging in, that an example of that  
21    would be that in considering whether or not to increase  
22    capacity, an airline oligopolist might consider whether its  
23    rivals would respond by increasing capacity. That's  
24    something that the airline oligopolist would consider, right?

25    **A.** I think it's fair that when they compete with each other,



1 they consider how their competitors will react on all  
2 dimensions.

3 **Q.** And fair to say that if the oligopolist use, in this  
4 case, that the anticipated response of the other airlines  
5 might result in them increasing capacity, that that's  
6 something that that oligopolist is going to take into  
7 account, right?

8 **A.** Sorry, I don't -- I don't think I follow you.

9 **Q.** I'll rephrase.

10 Well, you agree with me that an oligopolist  
11 considering whether or not to increase capacity would take  
12 into account whether it's rivals would respond by increasing  
13 capacity. That's a factor they're going to consider in this  
14 model that you have in mind for the airline industry, right?

15 **A.** Well, I think they're going to consider all competitive  
16 reactions to try to figure out where -- whether the behavior  
17 they're going to take is going to leave them better off or  
18 not. All right. I've talked in this case about things that  
19 the carriers here are trying to do in order to be able to  
20 compete more effectively, given what their competitors do.  
21 It's all part of that process.

22 **Q.** Well, fair to say that if the oligopolist anticipates  
23 that a response of its rivals would be to increase capacity,  
24 that might lead the firm not to increase capacity, right?

25 **A.** Yeah, I don't know --

1     **Q.** There are ways in which the interaction can play out,  
2     correct?

3     **A.** I don't really know how to answer at that level of  
4     generality. They're going to consider the reactions. The  
5     more standard model of capacity competition is that --

6     **Q.** I'm not asking you about the more standard model,  
7     Dr. Israel?

8     **A.** Okay.

9     **Q.** I'm asking you about how the model applies with respect  
10    to the testimony that you're providing in this class action.  
11    All right. So let me ask it a slightly different way.

12                 Isn't it fair to say that the plaintiffs'  
13    allegation in that case is that an express agreement or some  
14    form of agreement has resulted -- resulted in a period in  
15    which the legacy airlines and Southwest airlines engaged in a  
16    form of coordinated conduct by limiting the amount of  
17    capacity growth they did, right? That's what that case is  
18    about.

19    **A.** I think that's a fair statement of plaintiffs'  
20    allegations.

21    **Q.** And you're offering -- your concept of oligopolistic  
22    interaction, as an alternative explanation for why carriers  
23    might not have decided to increase response -- increase  
24    capacity during that period, correct?

25    **A.** Yeah, I offer several reasons why there -- the capacity

1 decisions were consistent with the situation in the airline  
2 industry.

3 **Q.** And the fact that the airline industry functions as an  
4 oligopoly is one of the reasons you offer, right?

5 **A.** Not so directly on the question that you just asked me,  
6 no.

7 **Q.** The notion of oligopolistic interaction, as we've just  
8 been describing it, that's one of the reasons you offer for  
9 why, perhaps, it wasn't an express agreement that the  
10 airlines were engaged in, right?

11 **A.** I don't recall that being part of my opinion. As I -- I  
12 mean, I'm happy to explain what my opinion was, but I do not  
13 recall anything in my opinion saying oligopolistic  
14 interaction was the alternative explanation.

15 **Q.** Okay. Well, we can move on.

16 Dr. Israel, you testified on direct about your  
17 estimate -- your estimate of consumer benefits based on the  
18 Raven output that was provided to you by the clean team,  
19 right?

20 **A.** Yes.

21 **Q.** And if we could pull up a slide that was part of what was  
22 provided to us this morning, but you didn't actually end up  
23 using. So if you could go to slide -- I believe it was slide  
24 20 of the collection of demonstratives that were provided  
25 this morning. And if you look at slide 20, you see that the

1 analysis that you did, based on the Raven output, that that's  
2 the analysis based on that third row, right?

3 **A.** Right. This is Dr. Town's slide. So my slide was going  
4 to illustrate what I had said in my testimony about my  
5 understanding of these scenarios, so I don't agree with  
6 mixing and matching. I shouldn't say those are my words.  
7 But I agree, as I described, that the comparison was the 2019  
8 schedule against the NEA 2023 schedule.

9 THE COURT: Just so I understand, is this slide 20  
10 or slide 19?

11 MR. WALL: Your Honor, I skipped over this. So  
12 there's two slides. He was going to talk about a  
13 modification --

14 THE COURT: So I just -- just so when I go back.

15 MR. DOIDGE: I can clarify, Your Honor. I believe  
16 what's happened is that we received an additional slide this  
17 morning that we don't have the electronic version of. So we  
18 have what was provided last week, so all of these page  
19 numbers are going to be one off from what was actually --

20 THE COURT: So I should look at -- this is slide  
21 20. All right. From Dr. Israel's deck.

22 MR. DOIDGE: Correct.

23 MR. WALL: But again --

24 THE COURT: He's repeating it from -- I understand  
25 it's not in his words, but I'm thinking if I'm looking at

1 that transcript and want to find the document.

2 MR. WALL: Exactly. Sorry for the confusion, just  
3 in the interest of time, we had skipped over some of them.

4 THE COURT: Yeah. No, it's not problem.

5 MR. WALL: He had a series of two, the first one is  
6 Dr. Miller's original -- or Dr. Town's original --

7 THE COURT: Got it. Go ahead.

8 MR. DOIDGE: Thank you, Your Honor.

9 BY MR. DOIDGE:

10 Q. So I think you were just saying, Dr. Israel, but I just  
11 want to make sure it's clear in the record, that you don't  
12 disagree with Dr. Town's characterization that for the no-NEA  
13 world, you used the 2019 actual schedule, and for the NEA  
14 world, you used the v2 2023 schedule, right?

15 A. I agree. As I hope I described, I used the 2019 schedule  
16 from September, compared to the v2 schedule.

17 Q. Okay. And we can turn to the next slide that, again, you  
18 didn't present, but was here this morning. And here, if we  
19 look at the no NEA scenario, in that bottom row, you've added  
20 a description to that no-NEA scenario, stating that the 2019  
21 actual is the best prediction of stand-alone 2023, where  
22 demand gets back to 2019 levels, correct?

23 A. Right. That's a short run summary of what I was trying  
24 to say in my description and in my testimony.

25 Q. Yeah, I think what you said earlier today, and what

1     you're reflecting here in the slide, is that it's now your  
2     position that the 2019 actual schedule is the best baseline  
3     for a stand-alone 2023 scenario; is that right?

4     **A.** I think that's fair, yeah. I mean, sometimes it gets  
5     confused. People call it 2019 or call it 2023. But in  
6     either case, it's an attempt to estimate the best baseline of  
7     the stand-alones when they return to a world post-COVID.

8     **Q.** And in reaching that opinion, you relied on what the  
9     clean team told you, right?

10    **A.** In part. Again, I think I described this. I talked to  
11    them at length, but certainly also, you know, thought about  
12    this hard from my view as an economist.

13    **Q.** Well, during your direct testimony, I believe, there was  
14    a period of time when you repeatedly referred to  
15    conversations that you had with the clean team with respect  
16    to this period, right? Do you recall that testimony on  
17    direct?

18    **A.** I don't recall the specifics of what I said, just the  
19    words, but certainly I described a period when I came into  
20    that case and talked to the clean team about what they had  
21    done.

22    **Q.** And you testified that the clean team told you that they  
23    couldn't construct any other alternative schedule for 2023  
24    stand-alone, right?

25    **A.** Not -- I think what I should have said, if I wasn't

1 clear, was not and have it be meaningful, given COVID.

2 **Q.** Well, fair to say, Dr. Israel, that you were relying in  
3 part on the purported judgment of the clean team in  
4 determining the 2019 actual schedule is the best available  
5 prediction for what they would do in 2023, right?

6 **A.** Yeah, that's what I said before. I'm certainly relying  
7 in part on what they told me about what they did in their  
8 business case, combined with my judgment after talking to  
9 them.

10 **Q.** And I think, as you just indicated, that characterization  
11 is based on your talking to them, right? You're talking to  
12 them back in May and June of 2020, right?

13 **A.** I mean, the part that depends on what they told me,  
14 certainly, was the questions and conversations that I had  
15 with them, you know, back then.

16 **Q.** And in your expert report, you explain that part of your  
17 opinion is based on, quote, your direct observation of the  
18 planning process, during which you were regularly kept  
19 informed of developments, right?

20 **A.** I don't remember the exact words from my report, but  
21 that's fair. I mean, I think the way to say it is they had  
22 done a planning process. I asked questions, and there  
23 certainly was back and forth as I asked those questions, and  
24 they gave me answers.

25 **Q.** All right. And you had conversations with members of the

1 clean team -- members of American's clean team in May and  
2 June of 2020, right?

3 **A.** I'm sorry, can you repeat that?

4 **Q.** Yeah. You had conversations with American's clean team  
5 in May and June of 2020, right?

6 **A.** That's sounds right, yes.

7 **Q.** And you had conversations with JetBlue's David Fintzen in  
8 May and June of 2020, right?

9 **A.** That sounds right, yes. The dates sound right. I think  
10 that's correct.

11 **Q.** And you didn't take any notes at all during those  
12 meetings, correct?

13 **A.** That's correct.

14 **Q.** And you don't have access to notes that anyone else took  
15 of those meetings to inform your recollection of what  
16 happened in those conversations, right?

17 **A.** That's right. This stuff is what I do all the time so  
18 it's imprinted in my brain, but I don't have any written  
19 notes.

20 **Q.** All right, Dr. Israel, I'd like you to turn to your  
21 expert report.

22 We can take the slide down for a moment.

23 **A.** Is it in the exhibits?

24 **Q.** Yeah, it should be in --

25 **MR. DOIDGE:** Is there a separate binder for the



1 report?

2 MR. WALL: First tab.

3 MR. DOIDGE: Thank you. Thank you, Mr. Wall.

4 BY MR. DOIDGE:

5 Q. So I'd like you to turn to page 149 and paragraph 278.

6 And are you there?

7 A. Yes.

8 Q. In the last sentence of that paragraph, you write that  
9 the comparison of the 2019 actual schedule to the 2023 NEA  
10 schedule reflects, quote, "comparing what a fully formed NEA  
11 would have done, given the 2019 industry conditions, to what  
12 the stand-alone carriers actually achieved given those  
13 conditions."

14 Do you see that?

15 A. Yes.

16 Q. And then if you could turn to paragraph 85 of your  
17 report. Just let me know when you're there. If it's  
18 helpful, it's on page 50.

19 A. Okay.

20 Q. And at paragraph 85 of your report, you write that,  
21 quote, "The clean team sought to contrast how a fully formed  
22 NEA would have run the airline-including capacity choices by  
23 each carrier and joint planning on capacity allocation, as  
24 described above, given 2019 conditions, versus how the  
25 stand-alone carriers actually ran the airlines in 2019."

1 Did I read that right?

2 **A.** Sorry, I was catching up to the sentence, so give me one  
3 second.

4 **Q.** Okay.

5 **A.** Yes.

6 **Q.** So is it fair to say that in your report that you were  
7 stating that the intention of the clean team was to create a  
8 schedule that would have existed in 2019, if defendants had  
9 had the opportunity to make fleet decisions based on the NEA  
10 existing in 2019, right?

11 **A.** I'm not -- I'm a little confused about how you're saying  
12 it. This is what I tried to clarify before. 2019 is our  
13 proxy for 2023. But it's fair to say that using that proxy,  
14 I'm trying to figure out what the NEA would have done, given  
15 those demand conditions.

16 **Q.** Well, at the time of the report, you tried to express the  
17 view that --

18 If we could put up slide 20 again. Or I guess  
19 it's, perhaps, actually slide 21 now, from your  
20 demonstratives today.

21 If we just focus on that third row, under the NEA,  
22 rather than characterizing the v2 schedule as something that  
23 they were looking forward to do in 2023, in your report you  
24 characterize that as something that the clean team envisioned  
25 would have happened in 2019 if they had the fleet resources

1 available in 2019, right?

2 **A.** Again, I think it's best described -- I mean, there's lot  
3 of words in the report where 2019 is mentioned and 2023 is  
4 mentioned, and it can lead to confusion if we're not careful  
5 because of this sort of COVID reset on the world. So you can  
6 call it 2019 or call it 2023, and either way it's designed to  
7 say what the NEA would have done.

8 And I used the words "fully formed NEA" to capture  
9 the idea that it would be once the NEA is fully in place,  
10 which would mean 2023.

11 **Q.** So is it 2023 that is being compared -- are we comparing  
12 a 2023 world to a no-NEA world, to a 2023 NEA world,  
13 Dr. Israel? Or are we comparing a 2019 NEA world to a 2019  
14 no-NEA world?

15 **A.** The goal is to compare a post-COVID world, which is  
16 generally called 2023 throughout the discussions, using 2019  
17 as the best estimate we have of that. Because the world --  
18 the goal of everyone in the industry has been to try to get  
19 back to 2019 by 2023.

20 **Q.** All right, Dr. Israel. With respect to just focusing on  
21 that third row, now we'll just focusing on your  
22 characterization of the no-NEA world and your  
23 characterization that the actual 2019 schedule is the best  
24 approximation of a stand-alone world.

25 **A.** Okay.

1     **Q.** Fair to say that the actual 2019 schedule doesn't reflect  
2     what the airlines would have been doing in 2023 on a  
3     stand-alone basis, right?

4     **A.** It's a prediction, so it's what it says here. It's the  
5     best, I think, and the clean team thought we could do to try  
6     to approximate what would happen in 2023. It's not going to  
7     be exactly the same. The baselines never are. You can  
8     debate about them indefinitely, but here we have an industry  
9     trying to get back to 2019 levels and we know what happened  
10    in 2019. So that's the sense in which it's a baseline.

11    **Q.** And when you say what the clean team thought, Dr. Israel,  
12    you mean what the clean team thought in May of 2020 and June  
13    of 2020, right?

14    **A.** I think I mean to be clear what the clean team -- the  
15    basis for the planning exercise --

16    **Q.** Which occurred in May and June of 2020, right?

17    **A.** My conversations did. I guess I don't remember -- their  
18    planning exercise was done by the time I talked to them. So  
19    I don't remember if it was April, but it was how they  
20    explained why the planning exercise of comparing these two  
21    worlds made sense as a way to measure what the NEA could do  
22    in a postCOVID world.

23    **Q.** All right. Well, Dr. Israel, notwithstanding your  
24    characterization of what the clean team was telling you, you  
25    did heard the testimony from Mr. Friedman that the clean

1 team's 2023 schedule reflected a lot of growth that JetBlue  
2 would have done by 2023, anyway, right? You heard that  
3 testimony?

4 **A.** That's not what I heard him say.

5 **Q.** And Dr. Israel, using the actual 2019 schedule to compare  
6 to the v2 2023 schedule, fails to account for the fact that  
7 when American was flying many of its -- that American wasn't  
8 flying many of its JFK slots in 2019, due to a waiver from  
9 the FAA, right?

10 **A.** Yeah, there was a waiver in place. It uses 2019 actuals  
11 in the baseline. So there was a waiver in place that would  
12 be reflected in that. And there certainly was discussion  
13 between us during the investigation of the effects that that  
14 could have if you were to modify what the business case was  
15 to, you know, take out that waiver.

16 **Q.** Well, your failure to -- your use of the actual 2019  
17 schedule then because of this waiver is artificially lowering  
18 the stand-alone 2023 NEA scenario, right? Because those  
19 slots would have been flown by American in 2023 in a  
20 stand-alone, right?

21 **A.** Again, my use of the case was just to stick to what the  
22 business did in evaluating the deal. We -- there was  
23 discussion in the investigation and then in the report that  
24 said if you were to deviate from what they did in the deal  
25 and decide to take out those slots, that would reduce the

1 benefit estimate by 14 percent.

2 **Q.** Right. And Dr. Israel, when you just responded that your  
3 task was to stick to what the business did, what you mean is  
4 that you were going to stick to what the clean team gave you;  
5 is that right? Is that what you meant?

6 **A.** No, I meant what I said. I mean, that's approximately  
7 right. The clean team gave me the business case that I asked  
8 them carefully was that what you're going to present to the  
9 board? Was that the basis for the deal? And then I was  
10 going to stick to the planning they did in the ordinary  
11 course.

12 **Q.** Right. And using the actual 2019 schedule, Dr. Israel,  
13 that doesn't account for American's stand-alone plans to  
14 up-gauge regional jets in New York City, right?

15 **A.** I mean, it -- I don't know exactly how to answer that,  
16 just because it is the 2019 September schedule, so it does  
17 not build in for the NEA for anybody growth beyond that one  
18 comparison date. It is a snapshot apples to apples  
19 comparison on that date.

20 **Q.** All right. So in the same vein, Dr. Israel, using the  
21 2019 actual schedule doesn't capture the lease of 16 JFK slot  
22 pairs to JetBlue, right?

23 **A.** It doesn't capture any lease that wasn't happening on  
24 that date. There's obviously discussion of that lease and  
25 why I didn't incorporate it in my report, but it captures

1 what was happening on that date as the way to, you know,  
2 analyze the baseline, based on the decisions that were made  
3 on that date.

4 **Q.** And again, in the same vein, Dr. Israel, using the actual  
5 2019 schedule doesn't reflect growth announced in 2019 or in  
6 late 2019 or early 2020, but wasn't operating during the week  
7 of September of 2019 that you're using in the base, right?

8 **A.** Again, it's the -- it doesn't reflect changes by  
9 stand-alones or the NEA that would have occurred after that.  
10 It's what was happening on that date to give me an apples to  
11 apples comparison at a point in time.

12 **Q.** And you heard -- you heard Mr. Fintzen's testimony during  
13 the trial, right? You listened to that?

14 **A.** Yes.

15 **Q.** And so you're aware that Mr. Fintzen testified that there  
16 was a set of routes that were announced between the time of  
17 the September 2019 baseline and the time he was executing his  
18 analysis in the spring of 2020, right?

19 **A.** I think we have heard discussion from various people. I  
20 think they're called Retreats (phonetic) or something, they  
21 were opportunistic COVIDites. If that's what you're  
22 referring to, I recall that.

23 **Q.** Well, you also testified about the fact that American --  
24 or JetBlue, excuse me, already had plans in place to increase  
25 frequencies from Boston to LaGuardia from six to ten, right?

1     **A.** I don't recall the specific testimony, certainly I'm  
2     aware that people have testified that plans have been in  
3     place, and that plans have sometimes come to pass and  
4     sometimes not.

5     **Q.** Do you recall during his testimony that he explained that  
6     he had actually adjusted the baseline used in his analysis to  
7     account for those newly announced routes?

8     **A.** Yeah, I don't recall the specifics. I'm very aware of  
9     Mr. Fintzen's general testimony. It certainly is fully  
10    reflected in my -- as the source of my views on the NEA and  
11    the analysis of it, but I don't remember that specific  
12    testimony.

13   **Q.** And in any case, you didn't make any adjustments that  
14    would account for any new routes that Mr. Fintzen was  
15    describing there, right?

16   **A.** Right. Again, I'm not making adjustments for adds or  
17    subtracts by any of the sort of three scenarios I am  
18    comparing, meaning AA, JetBlue, and NEA. I'm comparing them  
19    as of the date for the purposes of clean team analysis to  
20    reflect the business case.

21   **Q.** And more generally, Dr. Israel, using the actual 2019  
22    schedule doesn't reflect other stand-alone growth by JetBlue  
23    and American that would have -- that would have occurred from  
24    2019 to 2023, right?

25   **A.** I mean, there's a lot in that question, so I don't really



1 know -- it doesn't reflect changes, whether they were growth  
2 or whether the trend of decline continued that we've seen  
3 historically. It's a snapshot as of a date in order to let  
4 me do an apples-to-apples comparison.

5 **Q.** Are you suggesting, Dr. Israel, that JetBlue would have  
6 reduced ASMs in, say, for example, Boston, between 2019 and  
7 2023?

8 **A.** I'm suggesting we don't know what would have happened  
9 over that time period. If you asked me, as an economist,  
10 what's the best prediction that I have, given lots of  
11 documents saying lots of different things, it would be the  
12 trends that I see. And so those tell me that the combined  
13 American and JetBlue had been steadily declining in New York.  
14 One had been growing, and one had been shrinking in Boston.  
15 One had plateaued in Boston. I could try to go put all of  
16 those trends in place, but then we'd fight about it forever.  
17 So I stuck to what the business team did to give me an  
18 apples-to-apples comparison on that date.

19 **Q.** The business team being the clean team?

20 **A.** Yeah, the business team being the clean team and as the  
21 planning process that the parties went through.

22 **Q.** Well, Doctor, you don't deny -- or maybe you do -- that  
23 JetBlue had stand-alone growth plans for Boston?

24 **A.** I don't deny that there are plans, the growth plans at  
25 JetBlue and American that sometimes come to pass and

1 sometimes don't. Right? All I'm denying is saying that I  
2 would never just take those growth plans and make them a  
3 baseline, or I would always get the baseline wrong based on  
4 what happens in the industry. So I would prefer to just use  
5 a given date.

6 **Q.** Well, let's focus just on JetBlue, because my answer was  
7 question was just focused on JetBlue, Dr. Israel.

8 So again, you don't deny that JetBlue had  
9 stand-alone growth plans in Boston, correct? Yes or no.

10 **A.** Sorry, I don't deny that there were such plans in their  
11 records.

12 **Q.** And again, you heard the testimony of Dr. Friedman and  
13 the documents that were shown to Dr. Friedman -- to  
14 Mr. Friedman, excuse me -- that reflect his view that the v2  
15 schedule that was being used by the clean team was capturing  
16 a lot of growth that JetBlue would have done anyway, correct?

17 **A.** Again, that's not how I would summarize that testimony.  
18 But I certainly heard him, and I have read all of those  
19 documents repeatedly.

20 **Q.** All right. And now, thinking more broadly, not just at  
21 what's happening at the NEA airports, but thinking across the  
22 networks, it's fair to say that your comparison in that third  
23 row, that's not going to account for any reduction in flying  
24 in non-NEA airports that might be done to fund an increase in  
25 flying at the NEA airports, right?

1     **A.** I mean, that -- as I understand what the business case  
2     was, and I think this was in Mr. Wall's question, too, it  
3     was -- it operated under the view that JetBlue could obtain  
4     those plans and did not incorporate the need to reduce flying  
5     elsewhere.

6     **Q.** Well, let me ask you my question again, and see if you  
7     can just answer it directly. Your comparison does not  
8     account for any reduction in flying in non-NEA airports to  
9     fund any increases in flying at the NEA airports, right?

10    **A.** And if the answer to that is yes, I was just trying to  
11    clarify that's, again, because --

12    **Q.** You don't need to clarify. Counsel will have plenty of  
13    opportunity for you to clarify, Dr. Israel. If you could  
14    answer the questions more directly, it would make this  
15    process much quicker.

16    **A.** Okay.

17    **Q.** And Dr. Israel, again, thinking about the broader  
18    networks of the two airlines, your comparison based on that  
19    third row doesn't account for any reduction in flying that  
20    American might undertake at, say, Philadelphia, in light of  
21    it being able to carry connecting traffic that it once  
22    carried over Philadelphia, now carrying that connecting  
23    traffic over New York City and Boston, right?

24    **A.** I'm sorry, I struggle to answer that with a yes or no.  
25    Because implicit is a premise is that they might do that. I

1 certainly considered everything I could on whether that  
2 premise was likely.

3 **Q.** Your analysis doesn't allow for that, though, right?

4 **A.** Yeah, my analysis --

5 **Q.** To assume that there was no change, your analysis assumes  
6 no change in others aspects of American's network, correct?

7 **A.** That's not correct. They planned a full network in the  
8 clean team exercise.

9 **Q.** In the clean team exercise, did it change the amount of  
10 flying outside of Philadelphia on American's network?

11 **A.** I would have to go look. But they planned a full  
12 network. I know on the American's side, sort of in jargon,  
13 they said they kept the block hours fixed so they wouldn't  
14 need to fund the flying with other aircraft. And then given  
15 that, they planned a full network.

16 **Q.** Well, I appreciate that, Dr. Israel, so maybe I should  
17 ask more directly.

18 Is it fair to say that one reason American didn't  
19 have to change the block hours is because on net, in these  
20 clean team runs, American doesn't actually increase capacity  
21 at the NEA airports, right?

22 **A.** We could look at the clean team results. I don't think  
23 that's right in terms of seats.

24 **Q.** Is it right in terms of frequencies?

25 **A.** It may well be. There is a fixed number of slots and

1 gates and JetBlue increased, so I would have to look. So my  
2 recollection, since you're asking me, if JetBlue increases  
3 frequencies at most of the airports, there's a fixed number  
4 of slots in some cases, so American comes down. But American  
5 up-gauges and increases seats.

6 **Q.** But in terms of frequencies, American actually is flying  
7 less frequencies in Boston than in the comparison that you do  
8 in that third row, right?

9 **A.** Again, I want to look to remember -- what I recall is  
10 American flying less and JetBlue flying more.

11 **Q.** And the same is true for LaGuardia, right? American is  
12 flying fewer frequencies in LaGuardia in 2023 under the NEA  
13 than it was flying in 2019?

14 **A.** I think this situation is what I described in Boston.

15 **Q.** Dr. Israel, I want to understand a bit more about how you  
16 gained this understanding that the clean team believe its  
17 best prediction that the stand-alone 2023 flying was the  
18 actual 2019 actual schedule. So let me start by referring  
19 you to your deposition, if you would and I believe that might  
20 be the second -- did we give you a separate -- that's in a  
21 separate binder. Thank you.

22 **A.** Okay.

23 **Q.** If you could turn to page 187 of your deposition. And if  
24 you look at line 1, there you were asked a question -- are  
25 you there?

1     **A.** Yes.

2     **Q.** Okay. You were asked the question: "Did you have any  
3     conversations with the clean team that involved discussing  
4     alternative ways of preparing counterfactuals?"

5             And if you want to just take a moment, it's a  
6     little bit of a long answer, so if you want to take a moment,  
7     and read that answer to yourself, and then I'll have a  
8     specific question.

9             THE COURT: What page are you on, again?

10            MR. DOIDGE: I'm sorry, Your Honor. We're on  
11     page 187 of Dr. Israel's deposition in this matter.

12            THE COURT: Yes. Thank you.

13            THE WITNESS: Okay.

14     BY MR. DOIDGE:

15     **Q.** All right. And what I want to focus on with respect to  
16     your answer is that part of your answer where you state,  
17     quote, "I don't recall any conversation that questioned this  
18     idea of taking a stand-alone actual world and taking an NEA  
19     world against those same conditions as the appropriate thing  
20     to do."

21            Fair to say that, in that answer, you were  
22     referring to your comparison that we see on the third row,  
23     that your comparison of the 2019 actual schedule and the v2  
24     2023 schedule, right?

25     **A.** Right. That's the comparison.

1     **Q.** And so my question for you is whether or not you stand by  
2     that answer today.

3     **A.** I mean, sure. You asked me if I had discussed  
4     alternative ways of preparing counterfactuals with them and  
5     what happened is what I've described. I had a call with them  
6     or more than one, where I asked them what they were doing,  
7     and they explained it to me, and it made sense. So I didn't  
8     question that idea. Instead I asked them about other things  
9     we might look at to understand other possibilities that DOJ  
10    would ask about.

11    **Q.** All right. So just -- I think this is a simple yes or  
12    no. So is it your -- sitting here today, you still stand by  
13    the testimony that you did not have any conversations that  
14    questioned the idea of comparing the 2019 actual schedule to  
15    the 2023 v2 schedule as an appropriate way to build a  
16    counterfactual? It's a yes or no, Dr. Israel?

17    **A.** Well, I can't answer that yes or no.

18    **Q.** Okay. We'll move on, then.

19                 Dr. Israel, looking again at slides 20 -- or 21, I  
20    guess I should be saying, from your demonstrative this  
21    morning, you have heard testimony during the trial that at  
22    the end of May 2020, the clean team had developed a v4  
23    schedule that would allow examination of the 2019 actual base  
24    with the 2019 NEA, right?

25    **A.** I don't think I've heard v4 characterized in that way. I

1 certainly am very similar with v4. It's on the slide. And  
2 understand it to be a schedule in which the NEA is  
3 constrained to operate effectively with the same capacity as  
4 the stand-alones.

5 **Q.** And doing that would allow you to compare to reflect --  
6 well, we're talking about the first row in your  
7 demonstrative, right? In your demonstrative slide 21. Right  
8 now we're talking about the first row, correct?

9 **A.** Right. But the language from the first row is from  
10 Dr. Town, so it's not exactly, but yes, it would compare a  
11 2019 actual schedule to a schedule in which, the way I think  
12 about it, the NEA was dropped on the world from above in  
13 2019, so it had no ability to add capacity and had to operate  
14 with the same capacity.

15 **Q.** Okay. So now you want to characterize it again as a 2019  
16 versus 2019 comparison. Are we back to your third row? Are  
17 you adjusting your third row again?

18 MR. WALL: Objection. Form.

19 THE WITNESS: I don't understand the --

20 MR. DOIDGE: I'll withdraw, Your Honor.

21 BY MR. DOIDGE:

22 **Q.** And Dr. Israel, I'd like you to turn back to your expert  
23 report. And if you can go to page 49, Footnote 98. And if  
24 you look at the latter part of footnote -- well, first, let  
25 me just ask, you understand Footnote 98 to be talking about



1 the v4 schedule, right?

2 **A.** Yes.

3 **Q.** And then in the latter part of this footnote, you  
4 highlight that it was always understood that there would be  
5 fleet growth, right?

6 **A.** Yes.

7 **Q.** And so then you characterize, at the end of the sentence,  
8 that the v4 schedule exercise was an "internal check," right?

9 **A.** That's how I understand it.

10 **Q.** You don't provide any citation to support your  
11 characterization of the clean team understanding of that in  
12 that portion of your report, correct?

13 **A.** I don't provide a separate citation here. It would be  
14 part of these same conversations.

15 **Q.** Part of these same conversations that we're relying  
16 wholly on your memory of, right?

17 **A.** Definitely relying on my memory. They're very imprinted  
18 on me. This is the basis of everything that I've been doing  
19 for two and a half years.

20 **Q.** All right. And just to be clear, Dr. Israel, all of  
21 those conversations were happening when counsel was present,  
22 right?

23 **A.** I expect so, but, yeah. I imagine so.

24 **Q.** It's a yes or no, Dr. Israel. Those conversations  
25 occurred when either in-house American counsel or outside

1 American counsel, or outside JetBlue counsel or in-house  
2 JetBlue counsel, some counsel was present for every one of  
3 those conversations, correct?

4 **A.** I expect so. I can't say that I remember who was on  
5 every call, but I would imagine that counsel was on every  
6 call.

7 **Q.** All right. We can put the footnote aside.

8 Let's go back to your demonstrative again. Slide  
9 21. And again, it will show up as slide 20, because we're  
10 using -- we have the electronic version from last week.

11 So now I want to focus on the second row,  
12 Dr. Israel. You heard testimony from Mr. Fintzen that the  
13 clean team was working on a 2023 no-NEA schedule that would  
14 reflect stand-alone growth from 2019 to 2023, right?

15 **A.** I don't recall that specific testimony. Certainly  
16 Mr. Fintzen is someone I've talked with about this  
17 possibility at some length. It was one of the people who  
18 told me that it was impossible to do this in a meaningful way  
19 during COVID.

20 **Q.** And notwithstanding your characterization of the  
21 conversations that you had with Mr. Fintzen, you're not  
22 recalling right now that he testified, here at trial, that he  
23 engaged in efforts to build a 2023 no-NEA schedule that would  
24 reflect growth from 2019 to 2023?

25 **MR. SCHWED:** Objection. Mischaracterizes the

1 testimony in this trial.

2 THE COURT: Can you just ask him whether he recalls  
3 Mr. Fintzen saying that?

4 BY MR. DOIDGE:

5 Q. Do you recall Mr. Fintzen saying that?

6 THE COURT: Is that what the question is?

7 MR. DOIDGE: That's the question, Your Honor.

8 THE COURT: Why don't you say --

9 Overruled, you can ask him what he recalls, whether  
10 he recalls whatever you say it is.

11 BY MR. DOIDGE:

12 Q. Do you recall Mr. Fintzen testifying at trial that he was  
13 making efforts with respect to developing a 2023 no-NEA  
14 schedule that would reflect stand-alone growth from 2019 to  
15 2023?

16 A. I don't recall him saying something in that form, no.

17 Q. Do you recall documents that were presented during  
18 Mr. Fintzen's direct examination that indicated  
19 communications that he had, where he explained that they were  
20 undertaking that exercise in late May 2020?

21 A. Well, I mean, I broadly understand because I reviewed the  
22 documents themselves and talked to him while it was going on.  
23 I'm happy to explain that. I don't recall --

24 Q. I'm not asking you that.

25 A. Okay. I don't recall exactly what he said here. All I

1 can explain is what I know was happening.

2 **Q.** You don't recall the specific documents where, in his own  
3 words -- so, for example -- and we can try to pull it up for  
4 you, I don't have it handy at the moment -- where Mr. Fintzen  
5 is explaining to the CFO of JetBlue that he is asked -- for  
6 the regulatory case, that he is asked for the development of  
7 a scenario where they are looking at what their growth would  
8 be without Connie for 2019 and 2023?

9 THE COURT: Are you asking him just whether he  
10 recalls all of that?

11 BY MR. DOIDGE:

12 **Q.** Do you recall all of that?

13 **A.** I'm sure I recall the documents. Because I know what  
14 happened. We were having conversation about what we needed  
15 in a regulatory case, anticipating what we thought that you  
16 were going to ask us at DOJ. So I asked Mr. Fintzen, among  
17 others, whether they could try that, because I expected you  
18 to ask the question, and they went and tried it for a few of  
19 days and they told me it was impossible to do -- I should  
20 just make sure I'm clear, impossible to do in a meaningful  
21 way.

22 **Q.** And Dr. Israel, I want to make sure that I understand  
23 your testimony. Just to be clear, it's impossible for  
24 JetBlue to have constructed a stand-alone growth plan for  
25 2023. That's your testimony?

1     **A.** My testimony is what I said. I was told that that  
2     exercise would be meaningless in the middle of COVID.

3     **Q.** All right. But nonetheless it was possible for the clean  
4     team to develop a 2023 schedule for the NEA. That's your  
5     testimony?

6     **A.** By using 2019 as the proxy, by basing everything off of  
7     what was happening in 2019.

8     **Q.** Well, except they didn't do that, right? They assumed  
9     what was on the existing order book to look forward to 2023,  
10    right?

11    **A.** Everything based on 2019 conditions, just like I've  
12    described, but they explicitly added capacity and used the  
13    order book as the guide for what would be available. To be  
14    clear, there's no question that they added capacity to the  
15    NEA. It was all based on what they thought the two different  
16    setups would optimally fly against 2019 conditions, which  
17    they were using as their best proxy for what 2023 would look  
18    like.

19    **Q.** Well, we'll move on in a second, Dr. Israel. But let me  
20    just point out, again, referring to your slide 21, in that  
21    third row, you are describing what the clean team did as  
22    their best prediction of stand-alone 2023 for the NEA, right?

23    **A.** Right. That's why it goes on to put "2019 actual" in  
24    parenthesis.

25    **Q.** And in any case, Dr. Israel, you acknowledge that you

1 discussed with the clean team developing potential  
2 counterfactual that are reflected in rows 1 and 2 of slide 21  
3 of your demonstrative, right?

4 **A.** Yes. Literally whether there would be something like a  
5 v4 and whether they could do a 2023 schedule; or the subject  
6 of conversation explicitly telling them that those were  
7 things that I thought we would need to do because DOJ would  
8 ask, which led them to respond with frustration about why  
9 those things didn't make sense.

10 **Q.** All right. And just to try to get the chronology a  
11 little clearer, let me take you through some steps. So if I  
12 could ask you to turn to Plaintiffs' Exhibit 1146. It's in  
13 your binder.

14 MR. DOIDGE: And Your Honor, Plaintiffs' Exhibit --  
15 I move that -- I move for Plaintiffs' Exhibit 1146 to be  
16 admitted into evidence. This is one of the documents that  
17 was produced as a result of the privilege challenge.

18 MR. WALL: No objection.

19 THE COURT: Admitted.

20 (Plaintiffs' Exhibit No. PX-1146 admitted into  
21 evidence.)

22 MR. DOIDGE: So if we can put that up.

23 BY MR. DOIDGE:

24 **Q.** And, Dr. Israel, let's focus first on the middle of the  
25 page. You see that there was an invitation sent by Mr. Wark,

1 right?

2 **A.** Yes.

3 **Q.** And Mr. Wark is American's in-house counsel?

4 **A.** Yes.

5 **Q.** And he's ending an invitation for a meeting that's going  
6 to occur on May 20th at 3:00 p.m., correct? Central time?

7 **A.** Yes.

8 **Q.** And you're invited to the meeting, right?

9 **A.** It looks like it, yes.

10 **Q.** All right. And now if we can look up to the top of the  
11 page, you'll see that earlier that day, on -- earlier on the  
12 day of the May 20th, Mr. Wark forwarded that invitation to  
13 Mr. Pack, Mr. Bhargava, and Mr. Schweinzger, correct?

14 **A.** It looks like it, yes.

15 **Q.** And those are all three individuals on the American clean  
16 team, right?

17 **A.** Yes.

18 **Q.** And fair to say, Dr. Israel, that at this point in time,  
19 you had not received any Raven outputs from the v2 schedule,  
20 correct?

21 **A.** I don't know. I don't remember the days that well.

22 **Q.** Okay. We'll get to it in a minute.

23 So let me ask you to turn now to Plaintiffs'  
24 Exhibit 297.

25 **MR. DOIDGE:** And this is already in evidence,

1 Your Honor.

2 BY MR. DOIDGE:

3 Q. And if you can turn to the second page?

4 A. Hang on. I'm not there yet.

5 Q. Okay.

6 A. Okay.

7 Q. If you could turn to the second page, you'll see that  
8 Mr. Pack is sending an e-mail on May 21st, right?

9 THE COURT: It's also on the screen, if you prefer.

10 THE WITNESS: Okay.

11 BY MR. DOIDGE:

12 Q. And so Mr. Pack is sending this invitation on May 21st,  
13 and you see -- on this e-mail, on May 21st, and you see the  
14 e-mail relates to requesting that JetBlue provide a response  
15 to fill out the v4 schedule from the JetBlue side, right?

16 A. Where is the request to JetBlue?

17 Q. Well, Dr. Israel, this is an e-mail to Mr. Fintzen,  
18 right? Among others?

19 A. Maybe I'm looking at the wrong thing.

20 Q. It's on the screen, Dr. Israel.

21 A. No, that's the one I was looking at. I see an e-mail  
22 from Jordan to a whole bunch of people, and I don't know who  
23 he was directing it to. And I don't see, in this, an  
24 explicit request for anything from JetBlue.

25 Oh, here it is. I see it. "We can chat about what



1 ideas you guys might have." So I see the line that says, "We  
2 can chat about what idea you guys might have to fund increase  
3 flying on the B6 side."

4 So I don't - it seems fair he was asking JetBlue at  
5 least that much.

6 **Q.** Well, and Mr. Pack describes the v4 schedule as "This  
7 schedule serves as our best guess as to what would have  
8 happened in 2019 if AA and B6 had the partnership we were  
9 jointly proposing."

10 Do you see that?

11 **A.** Yes.

12 **Q.** And this is all occurring just one day after you had met  
13 with Mr. Pack and Mr. Bhargava and Mr. Schweinzger, correct?  
14 That meeting on May 20th that we were just looking at.

15 **A.** Yes, it looks like it was one day later.

16 **Q.** All right. And let's go forward in time a little bit,  
17 and if we go -- you stay on that document, if you look at the  
18 first page of that document at the very bottom, you will see  
19 that Mr. Fintzen replies on May 29th. Right?

20 **A.** Yes.

21 **Q.** And he is replying at 7:56 a.m., correct?

22 **A.** That's what it says, yeah.

23 **Q.** And if you look at the top of the first page, you'll see  
24 that, in his reply, that what he is explaining is that he has  
25 provided the v4 schedule from JetBlue in the shared drive

1 that the clean team was using, right?

2 **A.** It looks like it. The "v4 data back with adjusted  
3 frequencies," which I think would include the schedule.

4 **Q.** All right. And now let me ask you to turn to Plaintiffs'  
5 Exhibit 1145.

6 MR. DOIDGE: And Your Honor, while the witness is  
7 locating that, Plaintiffs' Exhibit 1145, we would move to  
8 admit into evidence at this time. This was another one of  
9 the documents that was produced as a result of the privilege  
10 challenge.

11 MR. WALL: No objection.

12 THE COURT: Admitted.

13 (Plaintiffs' Exhibit No. PX-1145 admitted into  
14 evidence.)

15 BY MR. DOIDGE:

16 **Q.** And Dr. Israel, if you look about halfway down the page,  
17 you'll see that there's a calendar invitation sent by  
18 Mr. Paik. Do you see that?

19 **A.** I do.

20 **Q.** Do you understand Mr. Paik is one of the attorneys at  
21 Latham & Watkins representing American?

22 **A.** Yes.

23 **Q.** And he's sending this invitation on May 29th at 9:53  
24 a.m., right?

25 **A.** I see that, yes.

1     **Q.** So just a couple of hours after Mr. Fintzen had loaded  
2     the v4 schedule into the shared drive, right?

3     **A.** Sorry, I forget the date of that earlier one. But if  
4     you're saying it's a couple of hours later, then I believe  
5     you.

6     **Q.** Okay. And the meeting invitation is for a meeting at  
7     5:15, that same day, Eastern Time. Right? 5:15 p.m.

8     **A.** Yes.

9     **Q.** And so that would be 4:15 p.m. central time, right?

10    **A.** Yes.

11    **Q.** And you heard Mr. Pack's testimony that, during the  
12    meeting that occurred later that day, that this reflects  
13    being scheduled, that that meeting on May 29th that he and  
14    Mr. Schweinzger exchanged text messages that were reacting to  
15    statements being made during the call that they were having  
16    with you, right?

17    **A.** Yes. I'm happy to give context on the call, if you'd  
18    like.

19    **Q.** So Dr. Israel, I'm not going to ask you to go into a  
20    great amount of detail, but just to make sure that we're all  
21    on the same setting, that those text messages include the  
22    text messages where Mr. Schweinzger writes to the effect  
23    of, "If we show full network results, no bueno," right?  
24    We're talking about that same set of text messages, correct?

25    **A.** I recall there was some discussion from Mr. Schweinzger

1 about which text went with which call, so I don't remember  
2 the specifics of that.

3 Q. But you're not questioning -- I just want to make sure I  
4 understand, you're not suggesting any -- you're not  
5 suggesting that you disagree at all with Mr. Pack or  
6 Mr. Schweinzger's testimony that those text messages were  
7 written --

8 THE COURT: How would he know?

9 MR. DOIDGE: Well, just in terms of the -- well, he  
10 was present at the meeting, Your Honor.

11 THE COURT: Yeah, but he doesn't know -- he wasn't  
12 a participant in the text thread, so how would he know, other  
13 than he can read the text messages, date stamped and time  
14 stamped as they are, like you and I can, but how would he  
15 know whether -- and he knows what the witnesses said, to the  
16 extent he heard and remembers, but how would he have any  
17 other information about when they were saying it?

18 MR. DOIDGE: And I didn't mean to be asking about  
19 what they were saying, Your Honor.

20 THE COURT: Or when.

21 MR. DOIDGE: Other than what he may know from  
22 having read the text. All I was trying to get at was whether  
23 or not he had any understanding --

24 Well, let me step back.

25 BY MR. DOIDGE:

1       **Q.** Do you understand, Dr. Israel -- you understand that  
2       Mr. Pack and Mr. Schweinzger testified -- you heard their  
3       testimony that those text messages were -- occurred during a  
4       meeting with you, right?

5       **A.** Again, there were a couple different calls. I think at  
6       least some of them, I recall them testifying, occurred during  
7       a meeting that I was on.

8       **Q.** Okay. But I just want to make sure, you don't have any  
9       reason to question whether or not those text messages  
10      occurred during a call with you. You're not calling that  
11      into question, right?

12      **A.** I don't know one way or the other. The first I ever  
13      heard of the text messages was during this litigation.

14      **Q.** And Dr. Israel, you met just a few days after May 29th,  
15      after this May 29th meeting, with the American clean team,  
16      correct? You met on June 3, 2020.

17      **A.** I don't remember the date. If it's in -- I believe you.  
18      There was a lot of work for the -- to understand what they  
19      had done and prepare to talk to DOJ going on at this time,  
20      but I don't remember this specific date.

21               MR. DOIDGE: That's fine.

22               If we can pull up Plaintiffs' Exhibit 1134?

23               And Your Honor, this is already in evidence.

24               THE COURT: Okay.

25      BY MR. DOIDGE:

1     **Q.** So Dr. Israel, you see that this is a calendar --  
2     calendar invite to you for a meeting on June 3rd at noon,  
3     right?

4     **A.** Yes, that looks correct.

5     **Q.** And other people being invited to the meeting are  
6     Mr. Pack and Mr. Schweinzger and Mr. Bhargava, right?  
7     Members of American's clean team?

8     **A.** And Matt McElfresh, who was, at the time, someone who was  
9     working with them on Raven.

10    **Q.** And Dr. Israel, the subject of this meeting is described  
11    as "counterfactual." You see that in the subject line?

12    **A.** "Garland counterfactual" I see.

13    **Q.** And then you see in the description that Mr. Paik  
14    provides for the meeting, he explains that it's going to  
15    be -- the meeting is for the counterfactual discussion,  
16    right?

17    **A.** I see that.

18    **Q.** And if we could now turn Plaintiffs' Exhibit 374A to get  
19    a little bit more context on that meeting.

20                 And you're familiar with Plaintiffs' Exhibit 374A,  
21    right? This is already in evidence. It's a series of text  
22    messages between Mr. Bhargava and Mr. Schweinzger, on  
23    June 2nd, right?

24    **A.** That looks right. Again, this is something that I think  
25    I first saw from you at my deposition. But that looks like

1 what you're describing.

2 **Q.** Well, just to be clear, I don't know that I did show this  
3 to you at your deposition.

4 **A.** My apologies. I saw some things that look like this at  
5 my deposition.

6 **Q.** So certainly portions were redacted, so I couldn't have  
7 shown you the redacted portions. Of that, I'm sure.

8 In any case, Dr. Israel, you see that  
9 Mr. Schweinzger is identifying that there's going to be a  
10 meeting the following day with Compass, right?

11 **A.** I mean, it says, "Here we have an internal call with  
12 Compass tomorrow guy."

13 **Q.** Right. And a little lower down, do you see where  
14 Mr. Bhargava notes that it is at noon?

15 **A.** "That's noon to 1." I see. I don't know what that  
16 refers to. Maybe it's the same meeting. I have no idea.

17 **Q.** And we look above that, immediately above that,  
18 Mr. Schweinzger is writing that the meeting -- well, "At the  
19 meeting we explain to Compass what they need to tell them."  
20 Right? Do you see that?

21 **A.** This we definitely did talk about at my deposition,  
22 because it's the same answer. I can read the text, "then  
23 with them after we explain to Compass what they need to tell  
24 them." Those are the words. I don't know what they mean.  
25 They are kind of hard to parse.

1     **Q.** Okay. And I think what we couldn't talk about at your  
2     deposition, because it was redacted at the time, was if you  
3     look below that, it continues, Mr. Schweinzger continues,  
4     "That they need to make the regulatory case."

5             Do you see that?

6     **A.** I see that listed here, with no time, I guess -- or  
7     maybe -- but yeah, I see it. I think we did talk about  
8     that -- maybe we didn't talk about that one. But, yes, I see  
9     that text.

10    **Q.** And Dr. Israel, you know, in thinking about -- in  
11    thinking about what occurred at the meeting on June 3rd, at  
12    noon, with American, is it fair to say that what occurred  
13    there is that the American clean team, members of the  
14    American clean team explained to you what you needed to  
15    subsequently tell JetBlue with respect to developing the  
16    regulatory case?

17    **A.** Not to my recollection. I have no memory of them telling  
18    me what to tell JetBlue ever.

19    **Q.** Well, you did meet, on June 3rd, with JetBlue's clean  
20    team separately later that day, right?

21    **A.** I don't recall if it was June 3rd. As I think I told you  
22    in my deposition, I certainly met with both clean teams. And  
23    we were in the process of asking the questions to anticipate  
24    what you would ask us, to get the information that we needed  
25    to meet with DOJ.



1     **Q.** Dr. Israel, let me ask you to look at Plaintiffs'  
2     Exhibit 509. And you can see that Plaintiffs' Exhibit 509.  
3     You'll see that that reflects a meeting invitation for  
4     4:00 p.m. sent by Mr. Paik, correct?

5     **A.** Yes.

6     **Q.** And the purpose of the meeting is to discuss the  
7     "Connie/Garland counterfactual issue," correct?

8     **A.** Yes. I mean, that's consistent with my recollection of a  
9     meeting to talk about what we would need to meet with DOJ.

10    **Q.** And again, Dr. Israel, this is going to go a lot laster  
11    if you just answer my question.

12                 MR. WALL: Object to that characterization. He's  
13    making --

14                 THE COURT: Sustained. For all of you, it would be  
15    helpful if you just asked questions, and it's a general  
16    proposition, not just for the current counsel, but for all of  
17    you, if you just asked questions without commentary. I  
18    understand where you're transitioning to. You don't  
19    generally need commentary to transition. And generally  
20    speaking, shorter questions with shorter words are more  
21    effective in my experience than longer questions with longer  
22    words.

23                 MR. DOIDGE: Very good, Your Honor.

24                 THE COURT: Go ahead.

25    BY MR. DOIDGE:

1     **Q.** So Dr. Israel, let me ask you to now turn to -- I  
2     appreciate that this document doesn't necessarily have all  
3     the information, so we've provided you with Plaintiffs'  
4     Exhibit 509A. 509A reflects the metadata?

5     **A.** Where is 509A?

6     **Q.** It should be right in front of 509 on your binder. I  
7     will pull it up on the screen for you.

8     **A.** I don't see a 509A -- oh, I think it's in the same tab.  
9     Okay.

10    **Q.** So you see in the metadata that you -- you're invited to  
11    the meeting that's happening at 4:00p.m. on June 3rd?

12    **A.** Yes.

13    **Q.** And other invitees include Mr. Fintzen from the JetBlue  
14    clean team, right?

15    **A.** I see that, yes.

16                 MR. DOIDGE: All right. We can take that down.

17    BY MR. DOIDGE:

18    **Q.** And Dr. Israel, just stepping back for a moment, it's  
19    fair to say that you recall discussing with the clean team a  
20    counterfactual that involved comparing the actual 2019  
21    schedule with the v4 schedule, right?

22    **A.** Yeah, I recall that I asked if that was possible, because  
23    I thought that you might ask for that.

24    **Q.** All right. And if we could put up slide 21 from your  
25    demonstratives earlier today.

1                   So that's the first row, again, right?

2       **A.**   Correct.

3       **Q.**   And you didn't end up --

4                   THE COURT:   But v4, just so I can keep this all  
5       straight, the v4 is NEA 2019 fleet compared to 2019 demand in  
6       Raven.

7                   THE WITNESS:   Correct.   So the two columns, no-NEA  
8       and NEA, would have identical fleets.

9                   THE COURT:   Right.   Go ahead.

10       BY MR. DOIDGE:

11       **Q.**   And you didn't perform a consumer benefits analysis based  
12       on those two, correct?

13       **A.**   I was never given any Raven output or anything.   I mean,  
14       I was told quite firmly that it didn't reflect what the NEA  
15       would do.   I told them you guys would still ask so I would  
16       like to see it, so I was prepared for the question.   They  
17       told me that it didn't make sense and it didn't go farther.

18       **Q.**   Dr. Israel, focusing on the second row, you do also  
19       recall discussing developing a stand-alone 2023 scenario that  
20       reflects stand-alone growth from 2019 to 2023, correct?

21       **A.**   Yeah, I don't think I ever told them it should reflect  
22       stand-alone growth.   I think I told them you guys would  
23       likely ask if you planned a 2023 schedule now, what it would  
24       look like, don't just use 2019, and they told me it would be  
25       a meaningless exercise.

1     **Q.** In any case, you didn't perform a consumer benefits  
2 analysis based on that comparison, right?

3     **A.** I was never given a schedule or any output. I was told  
4 it didn't make sense.

5     **Q.** And Dr. Israel, let me ask now to turn to Plaintiffs'  
6 Exhibit 454. And this is -- Plaintiffs' Exhibit 454 are  
7 American's responses to interrogatories, which are by the  
8 Department of Justice in this case, and I would just like you  
9 to direct your attention to page 10 and interrogatory number  
10 5.

11             I'm looking at the question that the DOJ posed, DOJ  
12 requested information that included information about  
13 instances where Compass Lexecon discussed with one or more  
14 members of the clean team actual or potential schedules or  
15 adjustments to schedules or scenarios for evaluating the  
16 potential relationships between American and JetBlue."

17             Do you see that?

18     **A.** I do.

19     **Q.** And then if we turn to page 11, which has American's  
20 answer, if you go to the bottom, and there American answered  
21 that "Compass Lexecon did not discuss or provide any input  
22 or -- to one or more members of the clean team relating to  
23 actual or potential schedules or scenarios for evaluating  
24 potential relationships between American and JetBlue.

25 Discussions by a Compass Lexecon with members of the clean

1 team were limited to Compass's analysis of the outputs of the  
2 clean team process."

3 Did I read that correctly?

4 **A.** You did.

5 **Q.** But Dr. Israel, you did discuss potential schedules with  
6 the clean team, right?

7 **A.** Well, what we've just been talking about. I discussed  
8 questions that I had about things that you might ask for. So  
9 I didn't write this, but I would characterize it as correct,  
10 I didn't ask for anything to evaluate a potential  
11 relationship. I asked questions about what they had done to  
12 try to anticipate what you might ask me.

13 **Q.** Well, fair to say, Dr. Israel, you did discuss the v4  
14 schedule, the potential v4 schedule with the clean team,  
15 right?

16 **A.** Yeah, I discussed v4. Again, in my mind, it was never a  
17 potential schedule. It was a sort of sensitivity case to  
18 anticipate what you might ask.

19 **Q.** And you also discussed the possibility of putting  
20 together a schedule that would reflect stand-alone American  
21 and JetBlue growth between 2019 and 2023, right?

22 **A.** With the same context, but yes, that's what we just  
23 discussed, in the context of trying to understand and prepare  
24 for what you might ask.

25 **Q.** Okay. You can put that aside.

1           Let's shift gears a little bit, Dr. Israel. And I  
2 wanted to talk to you a little bit about your discussion  
3 earlier today about capacity as a summary statistic. So I  
4 take it, Dr. Israel, that you're -- it is your view that you  
5 kind of use capacity as a summary statistic for the effects  
6 of the transaction; is that right?

7       **A.** I said if you could look at one thing, I think capacity  
8 is important. I mean, I think I said my summarized statistic  
9 given the issues here would be what's happened to capacity in  
10 New York. But generally, I think capacity is a good summary  
11 statistic of what's happening to supply.

12       **Q.** And by that you mean that you would look at what happens  
13 to capacity across the full networks of American and JetBlue  
14 to assess the competitive effect of the transaction, right?

15       **A.** I mean, again, I think it would focus on New York and  
16 Boston. I think you could look at capacity everywhere and  
17 then if somebody wanted to make some -- followed that path in  
18 some other place and make some argument about it, they could.  
19 So a whole network could be relevant. If somebody, you know,  
20 established something about it. But I think your focus would  
21 be on capacity in New York and Boston.

22       **Q.** Well, Dr. Israel, you would agree that if the NEA leads  
23 to less capacity across the full networks of American and  
24 JetBlue, that it would result in that harm, right?

25       **A.** Yeah, I don't know the answer to that. I mean, that's

1     why I spend a lot of time talking about markets and so on.  
2     It depends on -- somebody would have to take that supply  
3     shift, put it in a particular market, understand the  
4     competition in that market, and do an assessment to make a  
5     determination so you could do a benefits calculation like I  
6     did. So capacity would be a summary statistic, and then if  
7     you wanted to trace it down for some other market, you could  
8     need to do the necessary work.

9     **Q.** You would need to look at each route individually? Is  
10    that what you're saying?

11    **A.** I think if you want to show benefits or harms, you should  
12    analyze market competition. And that's what we've talked  
13    about a lot in here and why I stressed that my benefits  
14    calculation in full goes by route by route.

15    **Q.** Dr. Israel, it is fair to say that simply putting  
16    American and JetBlue together, as each existed in 2019, at  
17    the NEA airports, doesn't reveal much benefit, right?

18    **A.** Right. That's what we're talking about, about runs. I  
19    think that was in my deposition. So -- and I think that was  
20    in my direct, too. If you just put them together, you can  
21    squeeze out a little bit from the stone. But to really get  
22    the benefits, you need to create more suits to take advantage  
23    of the demand.

24    **Q.** Since you referred to the deposition, do you recall that  
25    during the deposition, we talked about presentation that the

1 defendants had made reflecting that if you just put the two  
2 networks together, it would only generate about \$50 million  
3 in benefit, right?

4 **A.** Yes, I do recall that.

5 THE COURT: What does it mean to just put them  
6 together?

7 THE WITNESS: More like v4, put them together, but  
8 don't add any extra capacity.

9 THE COURT: So to just put them together, is that  
10 just to connect them? Or is that to optimize the schedule?

11 THE WITNESS: Well, we were discussing it would  
12 include schedule optimization, too. So you optimize the  
13 schedule. You'll see on the runs that that creates more  
14 demand, but there aren't more seats to hold those people.

15 THE COURT: I see.

16 BY MR. DOIDGE:

17 **Q.** And just to provide a little bit more clarify, it's fair  
18 to say that the 50 million estimate didn't involve pulling  
19 capacity down outside the NEA, right?

20 **A.** Yeah, and as I think about it, I think the 50 million was  
21 just a codeshare. So I would have to go back and you'd have  
22 to show me. I think it was just turning on codeshares.

23 But in general, what I mean by just putting them  
24 together would be -- could include schedule optimization, and  
25 it would get to the same place. You can't do it unless you



1 have more seats.

2 **Q.** And again, just to provide a little bit more clarity to  
3 that answer that you just gave, it's fair to say that how --  
4 how Raven is used to estimate the benefits of the alliance,  
5 you do that by turning on a functionality in Raven that  
6 allowed for codesharing between the alliance partners, right?

7 **A.** I think that's correct. There are others who will know  
8 every switch in Raven better than I do, but I believe you can  
9 turn on codesharing.

10 Codesharing basically means we're marketing each  
11 other's flights, so you can turn on codesharing to see what  
12 that would do to demand.

13 **Q.** And that's what's producing the passenger counts that you  
14 rely on for your own consumer benefits analysis, right?

15 **A.** I mean, Raven is generally. Obviously, we did much more  
16 than turn on codesharing.

17 **Q.** Right. But with respect to what -- with respect to the  
18 Raven output, that's a key factor, right, is that you turned  
19 on the codeshare functionality for the two carriers?

20 **A.** It was turned on to reflect the NEA. I probably wouldn't  
21 say it was a key factor, because we see the schedule  
22 optimization, and then the increased capacity makes more  
23 difference.

24 **Q.** All right. And so Dr. Israel, getting back to that  
25 \$50 million estimate, just one more refinement. That was

1 provided to the Department of Justice at a time when you were  
2 using a different estimate of elasticity, right?

3 **A.** I think that's right. Another elasticity estimate in the  
4 literature was slightly lower than 2.1.

5 **Q.** So using the elasticity that you're now using today, that  
6 would mean that that \$50 million estimate of benefit would  
7 actually be lower, right?

8 **A.** Right. I think we talked about this in my deposition,  
9 and I'm not even sure it was me at Compass who responded to  
10 the DOJ questions about this run. I'm not sure I did it. So  
11 I can't speak to the exact method that was used. But  
12 assuming that it was my method that I presented today, then I  
13 agree that going from 1.6 to 2.1 would reduce benefits.

14 **Q.** And Dr. Israel, you haven't attempted to estimate how  
15 much of the benefit that you calculate, how much of that  
16 600-plus million that you calculate simply stems from JetBlue  
17 flying American slots, right?

18 **A.** I have not tried to break down the pieces. I have  
19 compared the two networks.

20 **Q.** And so you haven't analyzed whether JetBlue received  
21 additional slots on, its own it could profitably use them  
22 either, right? That's something else that you haven't looked  
23 at?

24 **A.** I don't think I've run JetBlue profits on -- I assume if  
25 they just received slots without paying for them, it could

1 use them, but I have not done an analysis of that on its own.

2 **Q.** And you haven't do any quantitative analysis of consumer  
3 benefit that would be generated from American simply leasing  
4 LaGuardia and JFK slots to JetBlue, right?

5 **A.** I have not run just that scenario. I mean, I think all  
6 of these would generally be captured under the idea that you  
7 don't get much without more capacity, but I have not  
8 separately run that scenario.

9 **Q.** But leasing the slots -- leasing American slots from  
10 American to JetBlue would be a way to generate more capacity,  
11 right?

12 **A.** No. JetBlue would have more. American would have less.

13 **Q.** Well, isn't part of the central premise here that JetBlue  
14 flies bigger planes than American was flying in 2019, right?

15 **A.** And, in fact, yeah, that's one of the ways that the  
16 network was planned, but I even think my last answer was not  
17 right. Just leasing slots from one to the other does not  
18 create additional capacity. Capacity is about adding  
19 aircraft.

20 **Q.** It doesn't matter how many seats are on the aircraft?

21 **A.** We're talking past each other. Adding capacity is when I  
22 compare pre and post, are there more seats in post available.  
23 That's about fleet. On a given route, how much capacity you  
24 have depends on how many seats you have. But the things that  
25 unlocks the benefits here is actually having more seats

1 available to fly.

2 **Q.** And one way that there could be more seats available to  
3 fly in 2023 versus 2019, is if JetBlue were flying American  
4 slots with bigger planes than American was flying in 2019,  
5 right?

6 **A.** Yeah, I don't agree with that. If they're flying the  
7 same fleet that they had. Mr. Laurence, for example, went  
8 on, and Mr. Friedman, at some length, about what the NEA has  
9 done for them, has given them the business case to go to  
10 their senior management and buy more aircraft. That's what  
11 increases capacity. Transferring slots between each other,  
12 codesharing, those things don't change the size of the fleet.  
13 You need a business case built on growth that actually  
14 generates the case to go buy more aircraft.

15 **Q.** Well, Dr. Israel, JetBlue doesn't fly on aircraft as  
16 small as the 40 and 50 and 60 and 70 seat regional jets that  
17 American was operating out of New York City, right?

18 **A.** That's correct. I agree with you that JetBlue's planes  
19 are bigger, but that doesn't change the fact that if you just  
20 move slots around, you haven't created any additional  
21 capacity. You've moved capacity around.

22 THE COURT: In other words, you might increase  
23 capacity on that route, but you've just taken it from  
24 somewhere else.

25 THE WITNESS: Yes.

1 BY MR. DOIDGE:

2 Q. And Dr. Israel, again, shifting gears a bit, you  
3 testified on direct that pricing independence was an  
4 important feature of the NEA?

5 A. Yes.

6 Q. Let me ask you to take a look at Plaintiffs'  
7 Exhibit 1121.

8 MR. DOIDGE: I believe this is already in evidence,  
9 Your Honor.

10 BY MR. DOIDGE:

11 Q. And if I can get you to focus on the slide, this is an  
12 American deck relating to revenue management. And if we can  
13 have you focus on the slide ending in the last few digits --

14 A. I'm sorry. I'm just having trouble finding the --

15 Q. That's okay. Let me know when you're there and I'll give  
16 you the page.

17 A. It just seems to skip from 950 to 1144.

18 MR. WALL: Mine does, too.

19 THE WITNESS: I see 1121 farther back, after 397.

20 Q. Okay. You have it now?

21 A. I found it. Yeah, I'm not sure counsel does.

22 Q. Okay, if you can turn to the page that ends in Bates  
23 number 832?

24 A. 32?

25 Q. 832, yes.

1       **A.**    Okay.

2       **Q.**    And there you see, there's a discussion of revenue  
3       management practices for American?

4       **A.**    Sorry, I couldn't read it because it was very small.

5       **Q.**    That's okay. Are you there now?

6       **A.**    Yes.

7       **Q.**    There you see there's a discussion of revenue management  
8       practices for American under the NEA and the WCIA, right?

9       **A.**    I don't know that -- this is an American document, but  
10      I'll take your representation. Oh, I see, "We are metal  
11      neutral with B6." Okay. I got it. Yes.

12      **Q.**    And so if we focus on that first bullet relating to the  
13      NEA. You see how it reads, it's stated, quote, "Within the  
14      NEA, we are metal neutral with B6 since it is 100 percent  
15      revenue share." Do you see that?

16      **A.**    Yes.

17      **Q.**    And then it further explains in the next sub bullet  
18      there, it explains that the revenue management strategy is  
19      to, quote, "Maximize revenue between the two by evaluating  
20      and combining market share for high level health."

21                   Do you see that?

22      **A.**    I see that.

23      **Q.**    And if you look at the fourth sub bullet there, it  
24      contrasts the revenue management strategy for NEA markets  
25      with how to treat markets where American is competing outside

1 of the NEA, right? There it reads, "Outside of the NEA, B6  
2 is still a competitor in all other routes," right?

3 **A.** It says, "B6 is still a competitor in all other routes."  
4 I don't know what they're drawing from that. That statement.  
5 I agree that that statement is here.

6 **Q.** All right. And then if we can turn to the second bullet  
7 that describes WCIA. And there you see that it's written  
8 out, "within the WCIA," and you understand that's the  
9 relationship American has with Alaska, right?

10 **A.** Yes.

11 **Q.** "So within the WCIA, since we only receive 20 percent on  
12 any growth, on an analyst level, we are not metal neutral,  
13 consider Alaska, OA, in all ways."

14 Do you see that?

15 **A.** I do.

16 **Q.** And in suggesting on direct that pricing and independence  
17 is a significant feature of the NEA, did you consider the  
18 distinction that's being made here in American's revenue  
19 management practices with respect to the NEA and the WCIA?

20 **A.** Certainly, I consider all of that in my analysis. I talk  
21 at some length in direct about metal neutrality and what it  
22 means, and I had a slide that explicitly broke out metal  
23 neutrality separate from pricing decisions.

24 **Q.** Well, in this case, the revenue management practice for  
25 the NEA, for within the NEA, is to try to optimize with

1 respect to the two carriers combined, right?

2 **A.** It says to maximize revenue for the two. There's not  
3 enough here for me to tell what all of this is telling them  
4 about revenue management. I think it's telling them  
5 generally to try to create high market share on the American  
6 side, which would be a procompetitive thing. But beyond  
7 that, I can't tell what all of this means.

8 **Q.** All right. Well, let me ask you about a slightly  
9 different concept related to pricing, Dr. Israel. You're  
10 familiar with the concept cross-market initiatives, right?

11 **A.** Yes.

12 **Q.** And you understand that concept to describe a pricing  
13 action in one route designed to induce a change in conduct by  
14 another airline on that route or some other route, right?

15 **A.** Generally, I think that's how the term is used. I might  
16 say a pricing initiative that airlines make on one route to  
17 initiate -- to create some reaction on some other route  
18 usually.

19 **Q.** All right. And in your experience, you've seen airline  
20 documents describing airlines undertaking cross-market  
21 initiatives, right?

22 **A.** Yes.

23 **Q.** And you recall Mr. Jarashow's -- like you're familiar  
24 with Mr. Jarashow's testimony? You looked at that in the  
25 course of the trial?



1     **A.** I listened to it on Zoom, but I don't recall it  
2 particularly well.

3     **Q.** Do you recall Mr. Jarashow testifying about JetBlue  
4 filing fares to flash other airlines?

5     **A.** I don't recall that.

6     **Q.** Okay. In any case, in suggesting on direct that pricing  
7 independence is a significant feature of the NEA, did you  
8 consider the ability of airlines to signal one another  
9 through these public pricing mechanisms?

10    **A.** I mean, I certainly considered everything that I know  
11 about airline pricing. I'm struggling to see the relevance  
12 of that for the effects of the NEA.

13    **Q.** Well, it's fair to say, Dr. Israel, that airlines don't  
14 necessarily have to sit down in a room together and talk in  
15 order to reach some accommodation with respect to what fare  
16 should prevail in a market?

17    **A.** I don't agree with that as you just said it.

18    **Q.** And Dr. Israel, with respect to your discussions of the  
19 MGIA, so it's your opinion that the MGIA creates an incentive  
20 for defendants to expand capacity, right?

21    **A.** Yes.

22    **Q.** And you heard -- you heard Mr. Friedman's testimony  
23 during the trial, right?

24    **A.** Yes.

25    **Q.** And do you recall that Mr. Friedman testified that when

1 he's engaged with his counterparts at American, and more  
2 generally, when he's engaged in joint route planning  
3 decisions on NEA routes, he and his team do not consider the  
4 MGIA?

5 **A.** I heard that, yeah. I certainly considered that.

6 **Q.** And you said that -- he said that he's been instructed to  
7 leave the MGIA math out of it, right?

8 **A.** Right. That makes sense to me, since I would expect the  
9 MGIA math to affect aggregate capacity decisions, not route  
10 planning decisions.

11 **Q.** Well, Mr. Friedman's team is making aggregate capacity  
12 decisions for capacity at the NEA airports, correct?

13 **A.** They're doing network planning and network deployment. I  
14 think he was quite clear, he's not the one deciding whether  
15 they should buy more aircraft, which is the level to which I  
16 would expect the MGIA to have its biggest effects.

17 THE WITNESS: I'm sorry, is there any way that I  
18 could have two minutes to go to the bathroom?

19 THE COURT: Of course. If you need to go to the  
20 bathroom, we'll stand right here in recess.

21 Do you know where it is down the hall?

22 THE WITNESS: Yeah. Thank you.

23 THE COURT: No problem.

24 MR. DOIDGE: Your Honor, I guess while taking the  
25 break, was it raised with the Court that Dr. Israel won't be

1 available tomorrow?

2 THE COURT: Who won't be available?

3 MR. WALL: Dr. Israel is not available tomorrow.

4 So how much more do you have, if I may ask?

5 MR. DOIDGE: Probably we're getting somewhere in  
6 the half-hour to an hour range.

7 MR. WALL: Is there any possible way to finish it  
8 today, Your Honor, if we come back at some other time of the  
9 day, or anything? To get him on his way?

10 THE COURT: I think -- whether I can give you time  
11 after my afternoon hearings, which would be starting at --  
12 like whether I could give you time at 3 o'clock -- there's no  
13 way I could give you time before 3:00 or 3:15 -- depends on  
14 one thing that I don't know the answer to right now about  
15 something that was filed, an emergency motion in another  
16 case. So I can take a look at that. I was planning to look  
17 at that at 1:00.

18 And I don't know whether it's -- there are varying  
19 definitions of emergencies, as you can imagine. So I need to  
20 take a look at that, and I don't know whether that means a  
21 hearing today or whether it doesn't. So I could -- I'm happy  
22 to -- Kellyann could let you know at 1:30, or something, or  
23 1:15. I have to take a quick look at it.

24 MR. WALL: And that's fine. If he just has a half  
25 an hour, at the moment, I don't have much myself.

1           THE COURT: Right. So if it's just that much, I  
2 would be happy, if I don't have to do this emergency hearing,  
3 to come back, subject to me talking to the court reporter and  
4 making sure that she's available and could do it, and then we  
5 could finish him.

6           MR. DOIDGE: And that's fine, Your Honor. I'm  
7 probably a little closer to that hour than I am to that half  
8 hour, just so we all understand.

9           THE COURT: Okay.

10          THE WITNESS: Thank you.

11          THE COURT: No problem.

12          BY MR. DOIDGE:

13          **Q.** All right. Dr. Israel, let's turn to another topic, and  
14 I'd like you to take a look at Plaintiffs' Exhibit 1145.

15          **A.** Okay.

16          **Q.** And first we'll focus -- we've seen this earlier today.  
17 This is the cover e-mail from May 29th, with the calendar  
18 invitation, right?

19          **A.** Yes.

20          **Q.** And can we look at the top part of the e-mail now?  
21 You'll see that subsequently there's -- sent to you later  
22 that day, on May 29th, is the v2 schedule Raven output?

23          **A.** Yes.

24          **Q.** So does that help refresh your recollection that it  
25 wasn't until May 29, 2020, that you received the v2 scheduled

1 Raven output?

2 **A.** Still not really. Pretty commonly we get more -- we get  
3 more than one version, or they could be corrections and  
4 things. So I just don't know when I first received it.

5 **Q.** Do you have any basis, just sitting there today, do you  
6 have any basis to believe that you had received any kind of  
7 Raven output as of the May 20 meeting that we were talking  
8 about before?

9 **A.** I just don't know. I'm not usually the one who opens the  
10 files and first pushes the buttons, and I do have reason to  
11 believe we often get multiple iterations. I just don't know.

12 **Q.** So let me ask you what we've done is we're going to open  
13 up -- we're going to open up the native file of what was  
14 attached, and we're going to look at it. In particular, a  
15 particular tab that was sent. It's the v2 segment data tab.  
16 And you'll see that there is a remarkable amount of  
17 information just on that one tab. So to make this thing a  
18 little easier, we're going to hide a bunch of the columns,  
19 and we're going to filter on some rows to help drill down on  
20 some of what the clean team gave you.

21 So what we're going to first do is pull up a  
22 version that was filtered just on column A, and what we  
23 filtered column A for is to identify any routes that involve  
24 Boston to LaGuardia, Boston to JFK, or Boston to Newark.

25 Do you see that?

1     **A.** Yeah, I don't know -- I'll take your word for how you  
2     filtered it. I'll see those segments as the ones that were  
3     listed.

4     **Q.** And you don't have any question that this is information  
5     that the clean team provided you as part of the v2 schedule,  
6     right?

7     **A.** Yeah. I have no reason to doubt that. As I said, it's  
8     usually people on my staff that push the buttons on this  
9     level, but I don't have any reason to disagree.

10    **Q.** All right. And you can see that if we focus on Boston  
11    LaGuardia and Boston JFK in row A, and then we look across --  
12    or column A, excuse me, and then we look across to column AG,  
13    there's a separate column titled "City." Do you see that?

14    **A.** Yes.

15    **Q.** And for Boston-LaGuardia and Boston-JFK, the city  
16    identified is Boston to NYC, right?

17    **A.** I see that.

18    **Q.** And now if we take a look at a similar row from Boston to  
19    Newark, again, looking at column A first, you see that  
20    Boston-Newark is there, it's Boston-Newark, right?

21    **A.** I do.

22    **Q.** And then if we look across to that city column, and we  
23    see that that remains Boston-Newark, correct?

24    **A.** I see that in the city column, yes.

25    **Q.** And so in this clean team analysis, it's grouping JFK and

1 LaGuardia together as New York City, right?

2 **A.** I mean, I don't know, grouping them as New York City,  
3 it's certainly the city identifier says "BOSNYC" for those  
4 two.

5 **Q.** And in contrast, it's identifying Newark separately from  
6 NYC, right?

7 **A.** In the city column, I don't know what it means, but in  
8 the city column, it says BOS to EWR.

9 **Q.** Right. And if we take a look at -- also take a look at  
10 column AI, do you see how that's describing whether or not  
11 the JetBlue -- whether or not there's an overlap between  
12 American and JetBlue in the particular -- particular route  
13 identified?

14 **A.** I do.

15 **Q.** And if we take a look at, again, just say Boston to  
16 LaGuardia, it identifies that as an overlap, correct?

17 **A.** Yes.

18 **Q.** And you'd agree that both American and JetBlue offer  
19 nonstop service between Boston and LaGuardia, right?

20 **A.** Yes.

21 **Q.** And they both offer, again -- if we look at Boston and  
22 JFK, we see that, again, that's identified as an overlap, and  
23 you'd agree that Boston that, in that route, both JetBlue and  
24 American offers nonstop service, right?

25 **A.** Yes.

1 Q. And if we take a look at Boston-Newark, however, we see  
2 that that's identified as a nonoverlap, correct?

3 A. I see "No" here in this column.

4 Q. And you're aware that JetBlue does provide nonstop  
5 service from Boston to Newark, right?

6 A. That sounds right.

7 Q. And American does not provide service from Boston to  
8 Newark, right?

9 A. That sounds right.

10 Q. All right. And now focusing your attention on column AF,  
11 you see it describes the "Type"?

12 A. I do.

13 Q. And you see the type, "Market transfer" is listed for  
14 Boston-LaGuardia? Do you see that?

15 A. I do.

16 Q. And you understand that to mean that's a market where one  
17 or the other carriers are going to cede that route to the  
18 other carrier, right?

19 A. I honestly don't know what market transfer means here.

20 Q. Well, maybe we can get a little clarification. If you  
21 focus on row -- column R and if we look down at the bottom  
22 for two columns for American, you'll see that if you compare  
23 column L to column M, and then see that R is the negative  
24 100 percent, that indicates that American -- American is  
25 pulling out all of its capacity in that route, right?



1     **A.** Right. I mean, I agree that under -- I didn't know what  
2     market transfer meant in that column, but I agree with you,  
3     under the clean team, the plan was to -- or the plan has been  
4     to shift Boston-LaGuardia to entirely JetBlue service.

5     **Q.** And now if we can pull that one down and just quickly  
6     we'll try to go to the next two. We don't need to dwell on  
7     that, I don't think. So the next one, we're going to focus  
8     on the market transfer tab?

9     **A.** Okay.

10    **Q.** So the next one is going to show -- we're going to filter  
11    on column AF from our transfers, and we're going to filter on  
12    column C for B6. And if you, again, look at column R, you'll  
13    see that this is picking out markets where B6 is pulling all  
14    of its capacity out of those routes, right?

15    **A.** Yeah. I mean, that's what is shown under the clean team  
16    plan. I don't think there have been those B6 exits in fact.  
17    But, yeah, the clean team indicated -- you know, replanned  
18    the network, and had cases where it was served by one or the  
19    other.

20    **Q.** All right. And if we can turn to the next slide, you'll  
21    see a similar thing. We've now -- we filter on American in  
22    column C, you'll see that there were several -- several  
23    routes where the clean team envisioned American exiting that  
24    were overlaps, right?

25    **A.** Yeah. Again, I think this is -- I think this is an

1 accurate clean team schedule. And so, again, yes, there  
2 were -- a part of the route planning for the clean team,  
3 there were routes that shifted to one or the other.

4 **Q.** Okay. You can pull that down.

5 And Dr. Israel, in the context of antitrust, it's  
6 fair to say that this notion of market transfer, we often use  
7 the word -- in antitrust, we often use the word "market  
8 allocation" for that, right?

9 **A.** Yeah, I don't think that's the same thing.

10 **Q.** So Dr. Israel, on your direct testimony, when you were  
11 talking about the analysis that you did on benefits, you  
12 highlighted that you looked across all -- your focus was  
13 primarily on looking at all the routes out of the NEA  
14 airports, right?

15 **A.** Right. And the benefit calculation, certainly based on  
16 the actuals, was entirely routes that touch an NEA airport.  
17 For the clean team, it was based on the full schedules.

18 **Q.** And fair to say, Dr. Israel, that you were not offering  
19 an opinion that there will not be harm in -- as a result of  
20 the NEA, in any particular nonstop overlap, right?

21 **A.** I think I'm offering an opinion that I don't see any  
22 basis for that harm, based on my experience of what alliances  
23 actually accomplish.

24 **Q.** And Dr. Israel, you haven't focused on a route-by-route  
25 analysis, though, right? That's fair, right?

1     **A.** I haven't done a route-by-route benefits analysis, but  
2     I've offered lots of other opinions about competition in  
3     these markets, about what alliances do, about what's happened  
4     to output overall, so I see no basis to conclude that there  
5     will be any harm.

6     **Q.** Dr. Israel, if we could take a look at Plaintiffs'  
7     Exhibit 2003.

8             MR. DOIDGE: And I see, Your Honor, I wasn't sure  
9     exactly where you need to stop. This is actually an okay  
10    breaking point, or I can keep going.

11            THE COURT: Why don't you go a little longer.

12            MR. DOIDGE: Okay. SO if you can put that exhibit  
13    back up. And we're focused on page 2.

14    BY MR. DOIDGE:

15     **Q.** Dr. Israel, this demonstrative depicts the Raven results  
16    that you're replying on. And here we see the results in the  
17    Raven outputs for the 2019 actual schedule and for the v2  
18    schedule. Do you see that?

19     **A.** Yes.

20     **Q.** And this -- this is specifically related to Boston to  
21    DCA, right?

22     **A.** Right. These are clean team plans for Boston-DCA.

23     **Q.** And we identified three metrics on this demonstrative.  
24    You can see departures, seats, and local passengers, right?

25     **A.** Yes.

1     **Q.** And you understand passengers to refer to passengers who  
2     are actually flying between Boston and DCA, as opposed to  
3     passengers who are on that segment for the purpose of  
4     connecting somewhere as part of a longer itinerary, right?

5     **A.** Yes.

6     **Q.** And so in this example, what we see is that what the  
7     clean team was envisioning was that frequencies, daily  
8     frequencies would decrease by 9.7 in Boston to DCA, right?

9     **A.** Yeah. And the clean team schedule, there was a reduction  
10    in frequencies between these two airports or these two --  
11    yeah, airports.

12    **Q.** And there was also a reduction in seats, right?

13    **A.** Correct.

14    **Q.** And there was also a reduction in local passengers,  
15    right?

16    **A.** No, that would come out of Raven. But under the clean  
17    team schedule, that's correct. That's not what's happened  
18    actually, but that's correct.

19    **Q.** And Dr. Israel, you would agree that all else equal, that  
20    an output decrease is reflected by that decrease in local  
21    passengers; that would result in higher prices, right?  
22    Again, all else equal.

23    **A.** All else equal, a reduction in seats, if it actually  
24    occurred -- I think I said it would put upward pressure on  
25    the prices. Whether it actual results in higher prices

1 depends on the market and the presence of market power that I  
2 talked about at some length last week and why hub carriers on  
3 the other end would cut against that.

4 But all else equal, if what actually happened was a  
5 reduction in seats, holding everything else constant, that  
6 would be an upward pressure on price, that you would then  
7 have to trace through the actual market conditions to reach a  
8 conclusion.

9 **Q.** And just to be clear, Dr. Israel, for this particular  
10 market, Delta was already serving Boston-DCA, right?

11 **A.** I believe Delta started in 2019.

12 **Q.** And at the other end, American is the hub carrier in DCA,  
13 right?

14 **A.** Correct. So Delta is serving this market with a very  
15 small aircraft. So this market is a really good example I  
16 almost used in my direct of a place where the hub carrier on  
17 the other end could easily up-guage.

18 **Q.** Let's turn to Plaintiffs' Exhibit 2003, and focusing on  
19 page 1 now.

20 And this exhibit depicts daily seats and  
21 departures --

22 **THE COURT:** I think we'll stop here. We'll stop  
23 here for the break.

24 **MR. DOIDGE:** Okay.

25 **THE COURT:** So I will get back to you shortly

1 through Kellyann, whether I can --

2 How much longer do you think you have?

3 MR. DOIDGE: If I could just have a second.

4 THE COURT: Sure. Take your time.

5 MR. DOIDGE: I guess about 40 minutes.

6 THE COURT: Okay. How long do you think you have?

7 MR. WALL: I mean, at the moment, I don't really  
8 have anything. But we'll see what 40 minutes from now, how  
9 I'm feeling about that.

10 THE COURT: Okay. Fine. Let me see. I'll get  
11 back to you shortly through Ms. Belmont, and whether the  
12 time -- the time I would have would start between 3:00 and  
13 3:15.

14 THE WITNESS: Just so I know, is this today?

15 THE COURT: That would be today.

16 THE WITNESS: Because I was in the other room.

17 THE COURT: Yes, that would be today.

18 THE WITNESS: I appreciate that, since I can't come  
19 tomorrow.

20 THE COURT: I'll let you know shortly.

21 (Court in recess at 1:06 p.m.

22 and reconvened at 3:47 p.m.)

23 BY MR. DOIDGE:

24 **Q.** Good afternoon.

25 **A.** Good afternoon.

1     **Q.** I think where we left off here, you were about to put up  
2     Plaintiffs' Exhibit 2003, page 1, so if you can please turn  
3     to that page. And this depicts the daily seats and  
4     departures flown on Boston-DCA on a particular peak day in  
5     2019, compared to 2022. Do you see that?

6     **A.** I do. I see a comparison of two days. Yeah.

7     **Q.** And I'll represent that we've selected the same two days  
8     that I think we used earlier in some demonstratives for  
9     Mr. Raja for some of our comparisons, And there you'll see  
10    that for Boston to DCA, here we see that the frequencies are  
11    lower in 2002, right?

12    **A.** Frequencies are lower, sorry, in 2000?

13    **Q.** In 2022, thank you, relative to 2019?

14    **A.** That's what it shows for this day, yes.

15    **Q.** And the seats are also lower in 2022 than they were in  
16    2019, for the combined carriers, right?

17    **A.** No. I mean, that's what it shows for this day. I've  
18    actually looked at this over time and that's not true. If  
19    you look at any given month or the year, the seats are up.

20    **Q.** All right, Dr. Israel, did you present anything in your  
21    direct with respect to establishing that?

22    **A.** No. It wasn't part of my report or my direct, I just  
23    followed the data over time and seats by the year 2022, or by  
24    the most recent months are up over 2019.

25           THE COURT: For the route.

1 THE WITNESS: For this route.

2 BY MR. DOIDGE:

3 Q. So you're disagreeing with the representation of this as  
4 a replication of an average weekday -- weekday in Boston-DCA?

5 A. I don't -- I think this represents a particular Thursday.  
6 I just don't think that Thursday -- or I know that Thursday  
7 does not represent the seats on a monthly or annual basis.

8 Q. All right, Dr. Israel, well --

9 THE COURT: Is the date on the bottom correct?  
10 That's the date, so 11/17/22?

11 MR. DOIDGE: I believe those were the same dates  
12 that were used for comparison.

13 THE COURT: Those were just what was scheduled  
14 rather than flown?

15 MR. DOIDGE: That's correct, Your Honor.

16 THE COURT: All right. Fine.

17 BY MR. DOIDGE:

18 Q. And Dr. Israel, is it your understanding that there are  
19 only three nonstop airlines on the Boston to DCA route,  
20 right?

21 A. Correct. I believe that's served by Delta, JetBlue, and  
22 American.

23 Q. And it's your understanding that the carve-out amendment  
24 to the NEA sets out a set of criteria, right?

25 A. I -- the way I understand the carve-out, it says certain



1 routes that are carved out, and indicates that there will be  
2 a review of routes, I think there are criteria, although I  
3 don't know them exactly, but it does say there will be  
4 discussion about possible addition of routes, but what I  
5 focused on when I discussed carve-outs was just the seven  
6 routes that are currently carved out.

7 **Q.** Well, Dr. Israel, is it fair to say that any amendments  
8 don't identify specific routes, right?

9 **A.** I guess I don't know the specific language of the  
10 amendments. So it's not something I've looked at. I just  
11 know the six, and then seven routes that are carved out.

12 **Q.** So you don't know that -- you're not aware of the fact  
13 that the way the NEA carve-out amendment is structured is  
14 that a market is supposed to be carved out if there's either  
15 no other airline providing nonstop service or only one other  
16 airline providing nonstop service?

17 **A.** I have heard that as a description, but I have not  
18 directly reviewed the language in the amendment. What I've  
19 heard your description that you just gave, and then I'm aware  
20 of the seven routes that are currently carved out.

21 **Q.** Well, let's assume that my description is correct. Now,  
22 you'd agree that even -- you'd agree that with respect to  
23 Boston to DCA, it would meet that criteria, right? There's  
24 only one other airline, in addition to American and JetBlue,  
25 serving that market, right?

1 MR. WALL: Your Honor, I object. That  
2 misrepresents the carve-out amendment language.

3 THE COURT: Sustained as to the form, unless you  
4 have the carve-out -- I just don't recall what the carve-out  
5 language says specifically and he doesn't seem specifically  
6 familiar with it, so unless you -- if you want me to take a  
7 look at it, I would.

8 MR. DOIDGE: Well, we can take a look if Mr. Wall  
9 is going to actually make this objection.

10 THE COURT: I think he did make that objection.

11 MR. DOIDGE: Well, we'll take a look.

12 Can we pull up the -- if we need to go to --

13 THE COURT: You can tell me where it is in the  
14 agreements, if you want. Is it in the NEA agreements?

15 MR. DOIDGE: It is. It should be an attachment,  
16 Your Honor, I'm not sure I have it right here, but there's an  
17 attachment to the NEA agreements.

18 THE COURT: Would it be the May 24, 2022, -- no,  
19 that's amendment 21.

20 MR. DOIDGE: No, there should be a 2021.

21 THE COURT: November 21st, 2021, bilateral special  
22 prorate agreement?

23 MR. DOIDGE: No, Your Honor. It's -- if I may have  
24 a moment.

25 THE COURT: Of course.

1 MR. WALL: It's called the "First Amendment to the  
2 MGIA."

3 MR. DOIDGE: Thank you.

4 THE COURT: I have it right here.

5 MR. DOIDGE: Okay. Do you have a DX number for  
6 that, Mr. Wall?

7 THE COURT: I have it as PX-0001-b.

8 MR. DOIDGE: Are you able to pull that up?

9 There we go. Thank you.

10 BY MR. DOIDGE:

11 **Q.** If you look at the bottom of the first page. So you see  
12 in the first sentence, Dr. Israel, under "A," where it refers  
13 to "American and JetBlue are the only carriers that are  
14 providing nonstop passenger flights city pair"?

15 **A.** Yes, I see that.

16 THE COURT: I've read it.

17 You can just read it. Why don't you just read the  
18 first sentence of "Excluded Service" right up to the end of  
19 sub B, where it says "nonstop passenger flights for that city  
20 pair."

21 And then you can ask him the question.

22 BY MR. DOIDGE:

23 **Q.** So I can read that into the record.

24 THE COURT: I don't think you need to read it into  
25 the record. It's an exhibit, part of the record, and I've

1 read it. It's in the record.

2 THE WITNESS: I'm good.

3 MR. DOIDGE: You're good.

4 BY MR. DOIDGE:

5 **Q.** So having seen that, is it your understanding that the  
6 way the carve-out amendment is structured is that if there is  
7 no other airline serving the city pair, or only one other  
8 airline serving the city pair, that the route is carved out?

9 **A.** Right. That's what it says. So in the case that we were  
10 just talking about, the city pair would include Washington,  
11 D.C., which would include Dulles in any definition that I've  
12 ever seen. So that would include United flying from Boston  
13 to Dulles. So there would be two other carriers, at least.

14 **Q.** So I take it, Dr. Israel, that the distinction that  
15 you're making is that the parties are treating Boston-DCA as  
16 not subject to the carve-out, because they've taken the view  
17 that city party for the Washington, D.C., area should be  
18 defined to include Dulles International Airport and Boston,  
19 and Baltimore/Washington International Airport, right?

20 **A.** I honestly don't know what they're saying about  
21 Baltimore, but I've never seen a definition of DCA used that  
22 didn't include Dulles. I've never seen it. So it would  
23 certainly, at least, included United flying from Boston to  
24 Dulles.

25 **Q.** You're aware of Professor Brueckner's report in this

1 matter, right?

2 **A.** Yes. I mean, generally.

3 **Q.** And you're aware that Professor Brueckner has opined that  
4 DCA is a distinct market from the other airports in the  
5 Washington, D.C., area, right?

6 **A.** I don't recall what his explicit DC breakdown was. I  
7 mean, he may have said that. I've never seen a case or been  
8 involved in a case where DCA and Dulles were split out as  
9 separate markets.

10 **Q.** Dr. Israel --

11 MR. DOIDGE: We can take that down.

12 BY MR. DOIDGE:

13 **Q.** Dr. Israel, if you can turn to paragraph 12 of your  
14 expert report.

15 **A.** Okay.

16 **Q.** And there you write that, "The NEA is the outgrowth of  
17 long-standing efforts of American and JetBlue to become  
18 competitively relevant in the highly competitive New York and  
19 Boston airline markets."

20 Do you see that?

21 **A.** Not yet. Where is it in the paragraph?

22 THE COURT: First sentence.

23 MR. DOIDGE: First sentence.

24 THE WITNESS: Oh, I see. Okay.

25 Yes.

1 BY MR. DOIDGE:

2 **Q.** And then you continue that, "The NEA is attempting and  
3 largely failing to grow relative to Delta and United, each of  
4 whom continues to grow in the Northeast, with American and  
5 JetBlue struggling simply to maintain their distant third and  
6 fourth place position."

7 Do you see that?

8 **A.** Yes.

9 **Q.** And then if we take a look at paragraph 36 of your  
10 report.

11 **A.** Yes.

12 **Q.** And there you write that, "The American/US Airways merger  
13 provided Americans some increased presence in the Northeast,  
14 but that presence mostly stopped at Philadelphia, leaving  
15 American well behind Delta and United further to the  
16 Northeast (New York and Boston)."

17 Do you see that?

18 **A.** Yes.

19 **Q.** So in those two paragraphs of your report, you're  
20 combining the concepts of New York City and Boston, right?

21 **A.** I don't mean to be combining them. There are two cities,  
22 four airports at issue in this case, and I'm making  
23 statements about those airports and those cities. The first  
24 statement that you read, as I read my report again, is  
25 obvious. The third and fourth statement is obviously correct

1 for New York. Generally, what I would intend to do in this  
2 case is use Northeast as a shorthand when I'm referring to  
3 all four airports, but certainly the statements about  
4 competition and their cities are different.

5 **Q.** Right. To the extent that anyone might have read that  
6 report is suggesting that American and JetBlue were  
7 struggling simply to maintain their distant third and fourth  
8 place position in Boston, you would agree that's not correct,  
9 right?

10 **A.** I would certainly hope the report, as a whole, doesn't  
11 give that impression. I think there's lots of tables that  
12 show where JetBlue is in Boston. But that sentence, to be  
13 more clear, should have said "New York."

14 **Q.** And if we turn to Defendants' Exhibit 973 in your binder.

15 This is an exhibit from Dr. Miller's -- Professor  
16 Miller's reply report?

17 **A.** 973.

18 **Q.** It's on the screen, too. It's easier to see.

19 In this exhibit, Professor Miller has charted  
20 market share, passenger shares in Boston from 2007 to 2019,  
21 for several carriers, right?

22 **A.** Right.

23 **Q.** And looking at -- looking at Boston, it's fair to say  
24 that United has historically lagged American, JetBlue, and  
25 Delta in the Boston market, right?

1     **A.** Yeah, that's fair. United has been a spoke carrier in  
2     Boston, a relatively small one.

3     **Q.** And focusing on the period from 2010 through 2013, we see  
4     that JetBlue was the largest carrier in Boston, and actually  
5     increased its share throughout that entire period, right?

6     **A.** Yes, that's fair.

7     **Q.** And focusing on 2014, we see that American became the  
8     second largest carrier in Boston, right?

9     **A.** Right. The big jump. One thing I commented on in my  
10    reports is this table is a little confusing, because there's  
11    merger effects here. But, yes, American, post-merger with US  
12    Airways, the combination that becomes American becomes the  
13    second largest carrier.

14    **Q.** And at that point in time in 2014, Delta occupied a third  
15    place position, right?

16    **A.** In terms of share, yes, that's what this shows. And then  
17    we've talked about what Delta has done since.

18    **Q.** And what Delta has done since is organically grown,  
19    right?

20    **A.** I mean, that -- they have grown without a merger, if  
21    that's what you mean. They have made Boston a hub. I talked  
22    at some length in my direct about what effects that has.

23    **Q.** And they've also grown without entering into a  
24    partnership that involves capacity coordination and revenue  
25    sharing, right?



1     **A.** Yes, they've grown on their own by making Boston a hub.  
2     And I talked about that at length in my direct about the  
3     effects of that.

4     **Q.** And fair to say that if we look back at 2014, and looked  
5     at American, American could have made a strategic choice to  
6     organically grow in Boston from 2014 to 2019, correct?

7     **A.** I think American has had many growth plans in Boston that  
8     have tended to fail. But in the proposition is some legacy  
9     carrier potentially could have made Boston a hub, and Delta  
10    did, I agree with that. Just once a legacy carrier makes  
11    Boston a hub, what airline economics tells me is there's no  
12    room for a second hub carrier, and so we need to find some  
13    way to compete with that hub.

14    **Q.** Well, your view, Dr. Israel, is that, in your experience,  
15    the most effective form of competition that arises to  
16    challenge a legacy hub is if an LCC can compete with that  
17    legacy hub, right?

18    **A.** I think stronger LCC competition with a legacy hub has  
19    generally been the best form of competition against a legacy  
20    hub, yes.

21    **Q.** And where you have observed in the past other LCCs  
22    effectively competing with a legacy hub, those LCCs haven't  
23    been involved in a revenue sharing and capacity coordination  
24    agreement with another legacy carrier, right?

25    **A.** When they haven't been other such agreements. Your

1 question used the word "effectively," so again, we talked  
2 about this in my deposition. Effectively has generally left  
3 out business competition. So JetBlue is trying to inject a  
4 different form of competition against Delta, where they're  
5 effective with business travelers, as well.

6 **Q.** And Dr. Israel, let me ask you now --

7 MR. DOIDGE: We can take that down.

8 Let me ask you to turn to paragraph 37 in your  
9 report.

10 THE WITNESS: Okay.

11 BY MR. DOIDGE:

12 **Q.** And there's a reference in paragraph 37, where you  
13 describe that "historical market shares likely provide the  
14 best predictor of future competitive significance."

15 Do you see that?

16 **A.** Um --

17 **Q.** It's about a quarter of way down on page 23.

18 **A.** Yes, I see that and refer to that as a standard  
19 assumption in antitrust.

20 **Q.** But by that -- well, but by that, you don't mean that  
21 market positions are fixed and unsalable, right?

22 **A.** Not as an absolute statement, just that shares --  
23 probably you could say also trends in shares give us an  
24 indication about what's likely to happen going forward. I  
25 don't mean they can never change.

1 Q. Well, if in fact, in Boston over time, we saw Delta grow  
2 its position from a lower market share to its current  
3 position, right?

4 A. Yes, I agree with that. There was an opening for a  
5 legacy carrier to take a hub position in Boston and then  
6 Delta did so.

7 Q. We also saw JetBlue begin as an entry to become the  
8 largest carrier in Boston, right?

9 A. I mean, an entrant has been some time ago, but yes,  
10 JetBlue, until the last three years, had been growing in  
11 Boston.

12 Q. Well, and in fact, Dr. Israel, JetBlue was growing right  
13 up through 2019, correct, it's share continued to increase.  
14 The highest share it had ever achieved in Boston was in 2019,  
15 right?

16 A. Well, I think that's true in the picture that we looked  
17 at, yes, and then applied to it after that, but yes, JetBlue  
18 has been successful in Boston. I see the NEA as a way to  
19 continue that.

20 Q. Well, let me ask you to stick to paragraph 37 of your  
21 report. And you see that there's a -- there you write, or it  
22 begins, "Absent the ability" -- I can highlight that for you.  
23 It's a little bit lower in that same --

24 A. Yeah. I got it.

25 Q. There you write, "Absent the ability to attract customers

1 by offering a competitive network, even small amounts of  
2 growth would have been difficult to achieve, instead what  
3 airline economics, including the well known Esker, tell us is  
4 that the airline that starts from a weaker network position  
5 tends to fall farther behind, despite it's best efforts, yet  
6 it is consistently running uphill against larger carriers  
7 running downhill with their network advantages."

8 Do you see that?

9 **A.** Yes.

10 **Q.** And in your view, one thing that the term "S-Curve  
11 Effect" is used to capture is an advantage that an airline  
12 has if it has the most frequencies on a route, right?

13 **A.** I think that's fair.

14 **Q.** And another thing that the term the S-curve is used to  
15 capture is an advantage for an airline if it has the largest  
16 presence at a specific airport, right?

17 **A.** I think that's fair. Generally, the larger airlines, by  
18 frequencies or presence on a route or airport, tend to have  
19 an advantage that tends -- not always, but tends to sustain  
20 itself.

21 **Q.** And so it's your view that if a legacy carrier  
22 establishes a hub, they tend to be hard for another legacy  
23 carrier to catch up with; is that right?

24 **A.** Yeah, it depends on the size of the city. Some very  
25 large cities have competition among multiple hubs, but

1 generally we see a single hub that is hard for other legacy  
2 carriers to displace.

3 **Q.** And in terms of the metric for share that would identify  
4 when a hub airport is at that place, you're not able to  
5 identify a particular share level that an airline needs to  
6 achieve it, right?

7 **A.** Yeah, I wouldn't try to define a hub by a share level. I  
8 would define it by the presence of a connective hub, where  
9 there's lots of spokes and a big connecting service. It's  
10 that pooling of demand through connecting service that  
11 defines a hub.

12 **Q.** Well, let's turn to Defendants' Exhibit 974. And this  
13 will come up on your screen, too. And this is from Professor  
14 Miller's reply report. We're just going to focus on the pie  
15 chart that relates to Boston. This is reflecting shares of  
16 domestic traffic in 2019. So if we could blow that up.

17 And there you see that in 2019, Delta has about a  
18 21 percent domestic passenger share, right?

19 **A.** Yes.

20 **Q.** And combined in 2019, JetBlue and American would have a  
21 combined 52 percent domestic share in Boston, correct?

22 **A.** If you add up those two parts of the pie, that looks  
23 right.

24 **Q.** And simply applying your network disadvantage logic,  
25 that's going to leave other airlines in Boston -- that

1 52-percent share is going to leave other airlines in Boston  
2 in a weaker position, right?

3 **A.** I mean, they have smaller shares. I think I just said  
4 that my definition of hub has to do with the pooling of  
5 connecting demand, which is what Delta is now doing.

6 **Q.** Well, fair to say that in assessing the effects of the  
7 NEA in Boston, you didn't assess the impact of other airlines  
8 being left in a weaker position, relative to the combined  
9 American/JetBlue partnership, right?

10 **A.** I mean, I -- I assessed the market condition and talked  
11 about it in some length. And I think my view is that Delta,  
12 as a hub with a connecting presence, is the strongest  
13 position to offer service. American by -- and the NEA, by  
14 fueling JetBlue, creates the competition for that. That's  
15 the testimony that I gave.

16 I didn't assess separately United and Southwest and  
17 others, versus American and JetBlue, because I testified that  
18 I think, to the extent there's market power in Boston, it  
19 would sit with Delta, given their hub.

20 **Q.** Well, it's also fair to say, Dr. Israel, that in  
21 examining the effects of the NEA in Boston, you did not  
22 consider whether other airlines would then need a partnership  
23 to compete with the combined American and JetBlue?

24 **A.** I did not analyze possible partnerships for anyone else.  
25 I think other airlines are probably all thinking about how to

1 compete with Delta's hub. I hope they all think about  
2 creative ways to do it.

3 **Q.** Dr. Israel, American has in excess of a 60-percent share  
4 in Philadelphia, right?

5 **A.** I don't recall the exact share numbers. It's an American  
6 hub, so I suspect the share is reasonably large. But I don't  
7 remember the exact number.

8 **Q.** Well, fair to say, given your statement in paragraph 37,  
9 that it's your view that it would be difficult for another  
10 airline to displace American in Philadelphia, right?

11 **A.** I think that's fair. In Philadelphia, I think the hub  
12 position -- I think it's unlikely that another airline is  
13 going to come displace American in Philadelphia.

14 **Q.** But Delta does compete in Philadelphia by providing  
15 nonstop service from each of its hubs to Philadelphia, right?

16 **A.** Right. A hub is -- as I think I said in my testimony,  
17 where carriers have hubs and can provide spokes, they provide  
18 competition on those routes. So you can provide a spoke from  
19 Boston to Philadelphia, that would provide a competition,  
20 primarily centered in Boston, but on that Boston-Philadelphia  
21 route.

22 **Q.** Well, but Delta can also offer -- by having that service  
23 from its hubs to Philadelphia, it can also offer competing  
24 service on a connecting basis throughout the entire United  
25 States, right?

1     **A.** I mean, so you're asking me, can hubs -- on connecting  
2     origin destination pairs, can competing services be through  
3     two different hubs? Yes, I agree with that.

4     **Q.** And to the extent that Delta has a disadvantage in  
5     Philadelphia with respect to American, you would agree that  
6     Delta also has a disadvantage with respect to American in,  
7     say, Chicago and Washington, D.C., right?

8     **A.** Those two market -- I mean, Delta is not what I would  
9     list as the primary competition for American in those two  
10    markets. I mean, it would be strongly United, to start with,  
11    in those markets, because those are examples of cities where  
12    there is a second hub carrier.

13    **Q.** So those are two cities where Delta's position is roughly  
14    similar to American's position in New York City, right?

15    **A.** I haven't done that comparison for similarity. There are  
16    cities in which Delta is not the hub carrier. And each of  
17    them has hub competition, so that's a big benefit to those  
18    two cities, but Delta is not part of that hub competition in  
19    those two cities.

20    **Q.** In the same way, to the extent that you're treating  
21    Newark as part of the larger market in New York City, New  
22    York City has the benefit of United competition with Delta as  
23    two large hub carriers, right?

24    **A.** Yes. Absolutely.

25    **Q.** Okay. But Dr. Israel, isn't it an implication of your



1 theory that if Delta cannot overcome this network  
2 disadvantage in Philadelphia or Washington, D.C. or Chicago,  
3 isn't it an implication of your theory that it now needs to  
4 partner with another airline in order to more effectively  
5 compete with American and United at those airports?

6 **A.** I don't mean to have said anything about what an airline  
7 needs to do. "Need" is not a word that I use much as an  
8 economist. It certainly is an implication of my theory that,  
9 if Delta has strategies, partnerships or otherwise, that make  
10 it a more effective competitor, we should evaluate those and  
11 see if they increase competition.

12 **Q.** So you would at least agree that the same logic that  
13 you're using to support the NEA would apply to a potential  
14 partnership that Delta might present with respect to  
15 Washington, D.C., or Chicago or Philadelphia, right?

16 **A.** If by "same logic," you mean we should evaluate it and  
17 see if it increases competitive intensity in order to decide  
18 if it's good or bad, then, yes.

19 **Q.** And it also implies that the same logic involves needing  
20 to be -- since you can't organically do it, you need to find  
21 a partner to allow you to synthetically expand the scope of  
22 your presence at that airport, right? That's what Delta  
23 would need at any of those three airports?

24 **A.** I really don't agree with any part of that. Delta --  
25 things that Delta can do to make itself a stronger competitor

1 would be procompetitive. I don't -- I have never said anyone  
2 needs a partner. I would evaluate a strategy on whether it  
3 made them a stronger competitor or not. And I don't agree  
4 with the concept of a synthetic growth as somehow an  
5 alternative. It's, again, a way -- it's a part of an  
6 analysis of whether someone is a stronger competitor or not.

7 **Q.** Well, let me ask, Dr. Israel, in the context of the  
8 American Airlines/US Airways merger, is it fair to say that  
9 it was your position that American needed to do that merger,  
10 because it needed to expand the scope of its network to  
11 compete with the larger Delta/United networks, right?

12 **A.** Again, I don't -- my testimony is never anyone needed  
13 something. My view of that merger was that it made the  
14 combined network more effective, and when I worked through  
15 the detailed analysis of that case, that was procompetitive.

16 **Q.** All right. So again, I apologize for using the word  
17 "need." Let me ask it differently. It was your opinion that  
18 your network logic justified the American/US Airways merger,  
19 because the logic entails that a larger network is a more  
20 effective competitor to -- there is -- that larger network is  
21 required to address the network deficiencies with respect to  
22 those other two carriers.

23 **A.** Again, I wouldn't used "required," but my view is that  
24 networks are an important part of airlines competition. And  
25 stronger networks is something that we should assess when we

1     assess airlines transactions. It's not the only thing that  
2     we should assess. I talked about market conditions and  
3     output effects and incentives in the contract, but yes, I  
4     strongly believe that airline network, stronger airline  
5     networks are procompetitive and should be an important part  
6     of the evaluation.

7     **Q.** And so I think what -- what we don't see, Dr. Israel, and  
8     maybe you could enlighten us, is that there's any limiting  
9     principle to this network disadvantage logic. Why isn't it  
10    just going to be the case that, as one legacy expands through  
11    a partnership or through a merger, the other legacy is going  
12    to have to respond to match the increase in size? And that's  
13    the spiral you send us down.

14    **A.** I mean, I would evaluate each of those on the effect they  
15    have on competition. Right? There's certainly -- I mean,  
16    networks are beneficial. We should evaluate those networks.  
17    Some of them have more network benefits than others. I've  
18    been quite clear that things -- mergers or fixed proportion  
19    profit sharing, things I've talked about could in some cases  
20    have harms to competition. A limiting principle is you  
21    should evaluate the size of the network efficiencies against  
22    the potential harms in each of those cases and decide which  
23    is bigger.

24    **Q.** Over here, if we can just, again, thinking about what's  
25    happening in Boston, it's your opinion that we need to go

1 down this path where JetBlue already has approximately  
2 33 percent market share in Boston, relative to what we saw in  
3 2019, at 21 percent share by Delta, right?

4 **A.** Again, I wouldn't -- my opinion is that strengthening  
5 JetBlue's network via this partnership makes them a more  
6 effective competitor for Delta, and that's a good thing.

7 **Q.** Let's turn to slide 10 of your -- I believe it's slide  
8 ten, although the numbers may have changed, but slide ten of  
9 your demonstratives this morning. Yeah, that's it.

10 And Dr. Israel, here on slide 10, you're  
11 identifying, in the first -- in the initial rows, you're  
12 identifying the New York City nonstop overlaps, right?  
13 Between American and JetBlue.

14 **A.** Correct. There's nonoverlaps at the bottom. We talked  
15 about this, it was a week ago, but there's nonoverlaps at the  
16 bottom, and then there's the overlaps above that, split out  
17 by how many other carriers there are.

18 **Q.** Okay. And just to get us caught up because, you're  
19 right, it was last week, here you're defining New York City  
20 as including JFK, LaGuardia, and Newark, right?

21 **A.** That's consistently my definition.

22 **Q.** And if we take a look at the row that relates to two  
23 other carriers in the market, you see we have six for a  
24 domestic. Is that right?

25 **A.** Yes.

1     **Q.** And last week you explained you didn't have concerns with  
2     respect to market's potential competitive effects, with  
3     respect to markets where there was two other carriers or  
4     greater than two other carriers in a market, right?

5     **A.** I mean, one of the things that I've said is that markets  
6     with at least two other carriers tend, in my view, not to be  
7     a competitive issue, or I haven't seen them be as much. That  
8     was along with the opinions about this being a hub for two  
9     other carriers and the effective alliances, and so on. But  
10    yes, I said, in my experience, when there's two other  
11    carriers, those receive less attention in these sorts of  
12    transactions.

13    **Q.** And with respect to those six carriers that you've  
14    identified in that row, those six routes you've identified,  
15    fair to say that Boston to New York City is one of those  
16    routes, right?

17    **A.** I -- is Boston to New York City one of those routes.

18    **Q.** That Delta serves and United serves to New York. Those  
19    are the only two, correct?

20    **A.** That's correct, as far as who serves it. I just am  
21    trying to remember in this one if it just split out DCA,  
22    because that's what DOJ had done or not. So I don't recall  
23    what's in which row as I sit here.

24    **Q.** All right. Well, let's assume that, for the sake of  
25    argument, that Boston to New York is one of those six that

1     you've identified on that row.

2     **A.**    Okay.

3     **Q.**    And if your theory about two other carriers being enough,  
4     again, there we only have -- we'd have United, Delta,  
5     American, and JetBlue in 2019, right?

6     **A.**    That sounds right.

7     **Q.**    And if your theory about three being enough holds, then  
8     JetBlue's entry into Boston/New York City shouldn't matter  
9     with respect to the pricing that prevailed in those markets  
10    prior to the entry, right? Because three is enough.

11    **A.**    No, I think JetBlue always matters. So I would take a  
12    very different position on these if I thought that what was  
13    going to happen here was a loss of the JetBlue effect.  
14    I just -- my opinion is that the JetBlue effect will be  
15    strengthened. And so given that and I think the usual logic  
16    about the number of other carriers applies. But just to be  
17    clear, if I for a second thought that an effect of this  
18    transaction would be to weaken JetBlue, my position would be  
19    very different.

20    **Q.**    Well, in taking those other six, at least sitting here  
21    today, you wouldn't disagree with me if I suggested that the  
22    other five of those six, again, the two other carriers you've  
23    identified are United and Delta?

24    **A.**    I mean, yeah. It seems likely, given United and Delta's  
25    position in New York.

1     **Q.** And it's your position that United or Delta would  
2     increase supply in response to higher fares by the NEA  
3     defendants? That's where repositioning and a competitive  
4     response would occur?

5     **A.** I think -- as I said, I think it very likely, in an  
6     attempt to restrict output by another carrier, it would lead  
7     to growth by the hub carrier. So in this case, that's Delta  
8     and United, so, yes.

9     **Q.** But fair to say that Delta and United are already in the  
10    route, right?

11    **A.** I mean, again, taking -- I accept your representation  
12    that that's Delta and United, so, yes, they would be on those  
13    routes.

14    **Q.** So fair to say that if they're already in that route and  
15    they don't increase capacity, they benefit from the higher  
16    fares introduced into that nonstop over lap, right?

17    **A.** The fares that would occur would be one thing in their  
18    calculus, but so would their ability to strengthen their  
19    network and increase their position on the route. What I  
20    experienced is that when given the opportunity, is hub  
21    carriers generally like to control as much of the share on a  
22    route as they can.

23    **Q.** Okay. So you think United or Delta would sacrifice its  
24    operations on some other route in order to respond to higher  
25    fares that -- if American and JetBlue decrease capacity on

1 one of these overlaps?

2 **A.** I'm not saying they would "sacrifice." I think one thing  
3 that I said explicitly was they are the two carriers that  
4 have very large slot positions, so their network has a lot of  
5 flexibility to respond to opportunities.

6 **Q.** But you would agree that if they're going to take  
7 advantage of that slot position, they're going to have to use  
8 flying from one market where they're using the slot, to a  
9 market -- one of these overlap markets, right?

10 **A.** They would either have to move one slot to add a flight,  
11 or they would have to swap planes so often they could  
12 up-gauge on one route and replace it with a plane that was  
13 not quite full from another route. When you have very large  
14 networks, that's why hub carriers are strong. They have lots  
15 of flexibility. They have lots of levers to pull to respond  
16 to the spokes in their network.

17 **Q.** So let me ask you to think about another example. Let's  
18 go down to the third row, where you've identified 11 routes  
19 that had three other carriers.

20 **A.** Okay.

21 **Q.** And perhaps you don't recall, but fair -- maybe you do,  
22 so I'll ask. Is New York City to Los Angeles one of those?

23 **A.** I don't know. Those are large passenger routes, as you  
24 see. So could well be. But I don't remember.

25 **Q.** In any case, your understanding that Delta, United, and



1 American all offer premium cabin service in that market,  
2 right?

3 **A.** Yes.

4 **Q.** And fair to say that you've seen evidence in the record,  
5 including testimony, that when JetBlue introduced its Mint  
6 service, the premium -- the premium fares that American and  
7 United and Delta offered in that market all came down, right?

8 **A.** I don't recall the testimony, but I'm sure that's  
9 correct. I fully believe that the JetBlue effect is real.

10 **Q.** So again, not your position in that particular instance,  
11 that having three other airlines was sufficient to prevent  
12 the possibility of fares coming down in a market, right?

13 **A.** Yeah, as I said, if it's -- JetBlue, with the JetBlue  
14 effect or an LCC, that definitely has an effect. So like I  
15 said, I want to be clear. If the JetBlue effect were going  
16 away, then that would be -- that would entirely change my  
17 view of this case.

18 MR. DOIDGE: Can I just have a brief moment,  
19 Your Honor?

20 THE COURT: Yes.

21 (Counsel confers.)

22 MR. DOIDGE: All right. Your Honor, before we pass  
23 the witness, we would like to, in light of Dr. Israel's  
24 testimony earlier today, to renew the motion with respect to  
25 the documents that have been withheld for privilege.

1 THE COURT: All right. You can -- you've renewed  
2 the motion.

3 Anything that you want to say, Mr. Wall?

4 MR. WALL: No.

5 THE COURT: I take it you oppose?

6 MR. WALL: I oppose.

7 THE COURT: I'm not inclined to -- you've made the  
8 motion, and it's denied for all the reasons that I said. I  
9 understand what he said, but I don't think that anything that  
10 he said changes my view about those documents.

11 MR. DOIDGE: If I may have a brief opportunity to  
12 be heard, Your Honor?

13 THE COURT: Sure.

14 MR. DOIDGE: Yeah, so I think what I would want to  
15 emphasize is what we heard from Dr. Israel earlier today is  
16 that his benefits analysis fundamentally relies on a factual  
17 claim, and that claim is that the 2019 actual schedule  
18 reflects the best prediction of stand-alone 2023. And he's  
19 relying on that factual claim by another factual claim, and  
20 is that that was, in fact, the view of the clean team in May  
21 and June of 2020. So there's no -- there is no getting  
22 around what Dr. Israel has done with respect to justifying  
23 the analysis that he did, without getting beneath whether or  
24 not those factual claims are accurate.

25 THE COURT: You mean whether it's accurate that the

1 clean team said those things, or whether it's accurate the  
2 opinions baked within those statements?

3 MR. DOIDGE: Whether or not that actually reflects  
4 what the clean team believed. And we certainly have seen  
5 plenty of evidence to suggest that given the back and forth  
6 between both Dr. Israel and the clean team during the  
7 meetings where -- that are now being covered by this -- by  
8 the privilege claim, were that very factual issue is put into  
9 question.

10 THE COURT: So, one, I, as you all know, reviewed  
11 the documents. I don't think, if you read those documents,  
12 they they will in any way, shape, or form illuminate that  
13 question, number one.

14 But separate from that, I don't think that's -- so  
15 I don't --

16 So to the extent that you want them to illuminate  
17 whether or not the clean team was of the view of those  
18 factual predicates that you just described, I don't think  
19 those documents will illuminate that. That's my memory,  
20 number one.

21 Number two, separate from that, I'm not sure it's  
22 very -- like as a practical matter in this case, he did the  
23 comparisons he did, just like your experts did the  
24 comparisons they did. I'm thinking about: Are those  
25 comparisons useful? As to all of them. Right? What are the

1 assumptions they made? What are the conditions they  
2 considered? What didn't they consider? I'm evaluating all  
3 of that.

4 If he made great -- if his -- the comparisons  
5 analysis that he did was great and weighty, that will be  
6 persuasive. If it was not great or made assumptions that  
7 don't make sense or are limited or undermine it in various  
8 ways or contradicted about a number of things, I'm not sure  
9 the opinion of the clean team -- I'm not sure of the  
10 significance of the opinion, even if you -- like the  
11 significance of the clean team on these questions is that  
12 weighty. They did what they did. He did what he did. Your  
13 experts did what they did. So -- and the clean team people  
14 have been examined.

15 So I hear you, but for all of those reasons, and  
16 what I expressed in the decision, the written decision, I  
17 stand by the decision, and the request is denied.

18 MR. DOIDGE: All right. Thank you, Your Honor.

19 THE COURT: You're welcome.

20 MR. WALL: Just one question, Your Honor.

21 THE COURT: It's not required.

22 MR. WALL: No, no, it's not, but trust me, I  
23 thought about the wisdom of doing this.

24 **REDIRECT EXAMINATION BY COUNSEL**

25 **FOR DEFENDANT AMERICAN AIRLINES**

1 BY MR. WALL:

2 **Q.** One thing, which we actually had cut in the interest of  
3 time, but then it was raised by counsel here. Can we put up  
4 slide 28 of the demonstrative. You asked some questions  
5 about whether the benefits of the NEA are coming from the  
6 expense of other consumers outside of the NEA. You had  
7 prepared this to present in your direct examination, this  
8 slide called, "Observed Effects Benefits on Non-NEA  
9 Airports." Could you just explain what it is and what you  
10 discern from it?

11 **A.** Sure. This was thinking about this question about  
12 whether there was harm outside the NEA. So it is literally  
13 the same analysis, the same observed share analysis that I  
14 showed, where you compare share in 2019 to share in 2021.  
15 You convert that into passenger changes and then you turn it  
16 into benefits. It's the same thing, only done for the nonNEA  
17 airports, and it gets \$400 million in benefits to the nonNEA  
18 airports, because the traffic -- the share has gone up some  
19 in those locations.

20 **Q.** So that's a passenger change there in the middle column  
21 of about 1.7 million incremental 258 passengers?

22 **A.** Correct. So there are about 200 million passengers in  
23 2019, about 1.7 million in -- it went up. You do all of that  
24 arithmetic we went through, you figure out --

25 THE COURT: It's not that the total was

1 1.7 million, it went up almost 1.7 million.

2 THE WITNESS: Correct. Correct. And that's a  
3 little less than 1 percent of the 200 million that it started  
4 at. You do that same division, by the elasticity, all that  
5 stuff we did, same thing, you get \$400 million.

6 MR. WALL: Thank you, sir. No more questions.

7 MR. DOIDGE: Just one, Your Honor.

8 **RECROSS-EXAMINATION BY COUNSEL FOR PLAINTIFF USA**

9 BY MR. DOIDGE:

10 **Q.** Dr. Israel, the analysis that you were just looking at,  
11 that wholly depends on the inference you were using where you  
12 were finding those share changes, right?

13 **A.** I mean, certainly it depends on the share changes. I  
14 mean, yes. I showed other numbers looking at -- or, maybe,  
15 there are other numbers certainly and important things  
16 looking at other time periods, and so on, but, yes, it  
17 depends on the shares. The benefits calculation depends on  
18 the shares that you input.

19 MR. WALL: Nothing else, Your Honor.

20 THE COURT: All right. You're excused.

21 MR. WALL: Thank you, Your Honor, for giving us the  
22 extra time. We appreciate it very much.

23 THE COURT: No problem.

24 Let me just -- where are we? Tomorrow we have --  
25 we're going to proceed tomorrow 9:00 to 1:00?

1 MR. WALL: Yes, and we have two witnesses tomorrow.  
2 Dr. Brueckner -- Dr. Brueckner's direct exam is probably 45  
3 minutes or so. And then the final lay witness that we put  
4 on, Brian Znotins. So apropos some of the questions that you  
5 asked before, Mr. Znotins is the head of network planning at  
6 American Airlines. If there's anything in the realm of  
7 network planning that you want to ask about tomorrow, he's  
8 your man. He will be the one that will be able to answer  
9 that. That's all we have planned for tomorrow. It's  
10 possible that we'll end a little bit early. We'll see. And  
11 then we'll finish with Dr. Carlton on the next day.

12 THE COURT: On Wednesday.

13 MR. WALL: Yes.

14 THE COURT: So then should I anticipate -- what  
15 should I anticipate for -- like in terms of Thursday and --  
16 should I anticipate -- I have blocked out Thursday morning,  
17 but should I anticipate that we'll have witnesses Thursday  
18 morning?

19 MR. JONES: Yes, Your Honor, so after Dr. Carlton,  
20 we will put on Doctors Town and Dr. Miller, in that order, I  
21 think. Dr. Town first and Dr. Miller. So I would anticipate  
22 certainly going through until Thursday morning, at least.

23 THE COURT: And just in terms of -- I haven't done  
24 an exact calculation of the time, but my calculation was that  
25 9:00 to 1:00, these four days, which is now -- I've given you

1 an extra -- just about an hour, would complete everything of  
2 the time, roughly, the breaks, the extra time, everything  
3 other than the closings.

4 MR. WALL: That's how we look at it, as well,  
5 Your Honor.

6 THE COURT: Is that how you look at it?

7 MR. JONES: I think that's right, Your Honor. The  
8 only thing that I would say is just in terms of how this all  
9 shakes out, it depends in part on how early on Wednesday we  
10 get into the rebuttal case, taking into account how long the  
11 directs will be and how long the cross is going to be.

12 THE COURT: Okay. All right. I will see you all  
13 tomorrow morning.

14 MR. WALL: Let me just say, from this side of the  
15 aisle, we're really hoping that we're done Thursday and  
16 believe that we should be done Thursday.

17 THE COURT: Well, I'll just tell you that I don't  
18 have -- I start a criminal trial Monday morning, and we have  
19 a pretrial conference Thursday afternoon. And I don't have  
20 any time -- I don't think I have -- maybe I could find an  
21 hour for you Friday morning, but that's the most that I could  
22 find for you, I'm booked the rest of Friday. So, you know,  
23 if you told me, look, we don't want Thursday, we want to have  
24 those four hours for scheduling reasons, or not, we could  
25 talk about that. But I've been calculated that all of this



1 time would -- Monday to Thursday, ran out everything, other  
2 than closing arguments. And we'll just talk about when is a  
3 time to come back for closings.

4 And then if you want to do it soon, rather than --  
5 I'm going to want to see you probably after I've digested  
6 everything, but if you want to do that, I'm willing to try to  
7 find that time. It wouldn't be Friday. But that's the way  
8 that I'm thinking about it.

9 MR. JONES: And Your Honor, I would say certainly  
10 our hope and desire, as well, is to be done 1 o'clock on  
11 Thursday, with the taking of evidence. It's just a matter of  
12 getting Doctors Town and Miller up and down in that time  
13 frame, starting some time Wednesday, mid morning?

14 THE COURT: I guess I'm also saying that with  
15 respect to the amount of time that I added and the amount of  
16 time that we had, that I added the time. I gave you all the  
17 time you asked for. I thought that was fair under the  
18 circumstances for the reasons that I said, but I'm not  
19 anticipating, as I said before, adding to that time, for  
20 either one of you. Like the time I gave you originally, plus  
21 the additional time, is, in my view, sufficient. So, you  
22 know, short of catastrophic disaster or, you know -- I just  
23 don't see --

24 I meant what I said when I told you I was giving  
25 you those four hours, but I wasn't giving you five more

1 minutes, and I stand by that. So you should all plan your  
2 time accordingly. Because when that -- and my rough  
3 calculation is 9:00 to 1:00, especially with this additional  
4 hour, is we'll be done with all of that time by Thursday.

5 If I'm wrong about that, figure it out, tell me now  
6 or tell me tomorrow morning. But that's the way I've been  
7 operating as a rough calculation. And, you know, nothing  
8 stops you from asking, but I meant what I said before, and so  
9 far I haven't seen anything that would cause me to revisit  
10 and give more time.

11 MR. JONES: And Your Honor, to be clear, we are not  
12 asking for any additional time.

13 THE COURT: I understand.

14 MR. JONES: We heard the Court loudly and clearly.  
15 We are not asking for not a minute of additional time from  
16 our side.

17 MR. SCHWED: And from our calculation, unless  
18 there's more lost time than anticipated, we think all the  
19 time should fit in, as Your Honor predicted, by 1:00 p.m. on  
20 Thursday, unless something happens that's unexpected in terms  
21 of time being lost.

22 THE COURT: Okay. Great. Good. Have a good  
23 night. I'll see you tomorrow.

24 (Court in recess at 4:38 p.m.)  
25

**CERTIFICATE OF OFFICIAL REPORTER**

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 24th day of October, 2022.

/s/ RACHEL M. LOPEZ

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Rachel M. Lopez, CRR  
Official Court Reporter